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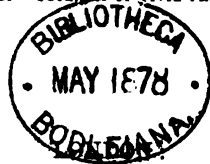
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A TREATISE
ON THE
JURISDICTION AND PRACTICE
OF THE
Admiralty Division
OF THE
HIGH COURT OF JUSTICE,
AND ON
APPEALS THEREFROM,
WITH
A CHAPTER ON THE ADMIRALTY JURISDICTION OF THE
INFERIOR AND THE VICE-ADMIRALTY COURTS.
WITH AN APPENDIX,
CONTAINING
STATUTES, RULES AS TO FEES AND COSTS, FORMS, PRECEDENTS
OF PLEADINGS, AND OF BILLS OF COSTS.

By EDWARD STANLEY ROSCOE,

BARRISTER-AT-LAW, OF THE NORTHERN CIRCUIT.

AUTHOR OF "OUTLINES OF CIVIL PROCEDURE."



STEVENS AND SONS, 119, CHANCERY LANE,
Law Publishers and Booksellers.
1878.

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PREFACE.

THE increase in the number of Admiralty actions of late years,* both in the High Court and in the Inferior Courts, makes a work upon Admiralty Law and Practice a necessary volume among modern law books. It is now nearly ten years since Messrs. Williams and Bruce published their work on Admiralty Law and Practice; and since 1868, this branch of law has been further developed, and many changes have occurred in the practice of the courts. Mr. Coote's useful book deals almost entirely with matters of practice, and the last edition was issued before the passing of the Judicature Acts of 1873 and 1875. A new work, which deals concisely with Admiralty Law and Practice, seems, therefore, to be one the publication of which is well justified.

As regards the law, I have tried to state the principles by which the Admiralty Courts are guided, and the extent of their jurisdiction, as concisely as possible, without discussing reasons or consequences, or points which are yet in doubt. As regards the practice of the High Court—since it is now, to a great extent, contained in the Orders and Rules which form the Schedule to the Judicature Act, 1875—I have taken these as the basis of this part of the work, and added to them, in the form of notes, such of the Admiralty Rules of 1859 as are still in force, and such remarks as

* *E.g.* in 1844, the amount of the fees taken in the Marshal's office was £793; in 1874, £2103.

will, I hope, make it a succinct compendium of Admiralty practice. But no attempt has been made to crowd into its pages all the decisions of the other Divisions of the High Court upon the Judicature Orders and Rules, most of which are necessarily placed in this volume. Generally, I have thought it convenient, where it was possible, to give two references to each of the more modern decisions which are cited. A chapter on the Admiralty Jurisdiction of the Inferior and Vice-Admiralty Courts will, it is hoped, prove useful to many practitioners. This is almost wholly the work of Mr. James Williams, of the Northern Circuit, whom I should take this opportunity of thanking for the labour he has given to it, which has added much to any value which this book may possess. I am very much indebted to Mr. H. A. Bathurst, Deputy Registrar, and Mr. A. T. Rackham, Chief Clerk of the Admiralty Registry, for most kindly and constantly giving me their help in matters relating to the practice of the Court, without which I could not have had the same hope of the practical usefulness of this book. I have also to thank Mr. William Tarn Pritchard for furnishing me with numerous precedents, and several others who have given me help in various ways.

E. S. R.

4, HARBOUR BUILDINGS, TEMPLE,
March, 1878.

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ABBREVIATIONS AND REPORTS.

ABBREVIATIONS.	FULLER TITLES.	DATE.
C. Rob.	Christopher Robinson's Admiralty Reports, 6 vols.	1798—1808
Edw.	Edward's Admiralty Reports, 1 vol.	1808—1811
Doda.	Dodson's " " 2 vols.	1811—1822
Hagg.	Haggard's " " 3 vols.	1822—1838
W. Rob.	William Robinson's Admiralty Reports, 3 vols.	1838—1850
Spk.	Spink's Ecclesiastical and Admiralty Reports, 2 vols.	1853—1855
Swa.	Swabey's Admiralty Reports, 1 vol.	1855—1859
Lush.	Lushington's " " 1 vol.	1859—1862
Br. & L.	Browning and Lushington's Admiralty Reports, 1 vol.	1863—1865
L. R. Ad.	Law Reports, Admiralty and Ecclesiastical Cases, 4 vols.	1865—1875
L. R. Ad. D.	Law Reports, Probate, Divorce, and Admiralty Division	1875
L. R. P. C.	Law Reports, Privy Council Cases	
L. J. Ad.	Law Journal, New Series, Admiralty Court, and, after 1875, Probate, Divorce, and Admiralty Division	1832
L. T. N. S.	Law Times Reports, New Series	1860
W. R.	Weekly Reporter.	
Jur.	The Jurist Reports.	
Moo. P. C.	Moore's Privy Council Cases.	
(A) after a case signifies that it is a decision of the United States Courts.		
A. C. A. 1861	Admiralty Court Act, 1861.	
M. S. A.	Merchant Shipping Act.	
J. A. 1873 or 1875	Judicature Act, 1873 or 1875.	
A. C. R. 1859	Admiralty Court Rules, 1859	
O.	Order.	
R or r.	Rule.	

JUDGES OF THE ADMIRALTY COURT SINCE 1800.

William Scott Baron Stowell	1798—1828
Sir Christopher Robinson	1828—1833
Sir John Nicholl	1833—1838
Sir Stephen Lushington	1838—1867
Sir Robert Phillimore	1867

CORRIGENDA.

PAGE.

- 10, line 12, *after* "order" *insert* "or."
16, note 9, *for* "1 W. Rob." *read* "1 C. Rob."
17, " 1, *for* "62" *read* "6."
36, " 2, *for* "Perana" *read* "Parana."
cx., note, *for* "VII." *read* "VI."
166, line 6, *omit* "in the nature of."
-

ADDENDUM.

- 94, note 5, *add* "But see the Falcon, Weekly Notes, March 9th,
1878, p. 60; 3 L. R. Ad. D."

A TREATISE
ON THE
JURISDICTION AND PRACTICE
OF THE
Admiralty Division
OF THE
HIGH COURT OF JUSTICE
AND
ON APPEALS THEREFROM.

INTRODUCTION.

THE Court of Admiralty was originally, as its name implies, ^{The origin} actually the Court of the Lord High Admiral of England, but ^{of the} by degrees it became, though differing widely in its jurisdiction ^{High} from the Common Law and Equity Courts, an ordinary municipal tribunal ^{Court of} Admiralty.

Throughout its history, a more or less continual struggle was carried on between this Court and the Courts of Common Law, to retain, on the one hand, the extensive civil and criminal jurisdiction which it originally claimed to possess, and on the other to lessen or to put an end to its powers. The progress of the struggle, broadly speaking, has been to narrow the Admiralty jurisdiction of the Court, until within quite recent times, when by legislative enactments and from a less jealous spirit on the part of the judges of the Common Law Courts, its jurisdiction has been considerably enlarged. It is only necessary to point to the unfettered exercise of its jurisdiction in cases of personal injuries caused by collisions at sea, and of breach of duty in the carrying of cargo, and of mortgage, as examples of this modern development.

Until the twenty-eighth year of the reign of Henry VIII., the Court of Admiralty exercised a criminal jurisdiction over

offences committed on the high seas, but at this date this particular power was put an end to, and has never since been regained.¹

So far as regards its mere general civil jurisdiction it is not easy to say when the Lord High Admiral's Court became actually established in this country, nor, except for merely antiquarian purposes, is it now of much importance. But it is certain that so far back as the reign of Edward I. it was a Court not only well known, but jealously watched, for in the twenty-second article of Part C of the Black Book of the Admiralty the following words occur, which have been supposed to show the starting point of the Admiral's jurisdiction in civil matters: "Item, any contract made between merchant and merchant, or mariner beyond the sea, or within the floodmark, shall be tried before the Admirall and nowhere else by the ordinance of the said King Edward and his lords."²

From that time various Acts of Parliament³ were passed in order to restrain the jurisdiction of the Court to things done on the sea. Yet from time to time persons tried to make use of its powers, but were restrained from proceeding by prohibitions issued by the Court of Queen's Bench.⁴ Nevertheless the jurisdiction of the Admiralty Court over things done upon the high seas, such as salvage and damage by collision, seems to have been undisputed, whilst, even over some special contracts, such as bottomry and over other matters, such as suits for wages and necessities, it with difficulty obtained a jurisdiction concurrently with that exercised by the Courts of Common Law and Equity.⁵

The extent of what may be termed the recognised jurisdiction of the Court at the time when its powers were most fiercely

¹ 28 Hen. VIII. c. 15; Russell on Crimes, 5th ed., vol. i., p. 10, et seq.

² The Black Book of the Admiralty, edited by Sir Travers Twiss, published under the authority of the Lords Commissioners of Her Majesty's Treasury, under the direction of the Master of the Rolls, vol. i., p. 69.

³ 13 Richard II. c. v.; 15 Richard II. c. iii.; 2 Hen. IV. c. 11; the Black Book of the Admiralty, vol. i., p. 412.

⁴ See cases collected, 4th Institute, 134, and criticized by Story, J.; De Lovio v. Boit, 2 Gallison, 398.

⁵ For a sketch of the wages struggle and the ancient jurisdiction of the Court, see De Lovio v. Boit, 2 Gallison, 398; and Pritchard's Admiralty Digest, Introduction, 2nd ed.

assailed, is well shown by an agreement made at Whitehall on February 18, 1632, in the presence of the King and the Privy Council, to solve, if possible, the difficulties which were continually arising between the hostile Courts of Common Law and the Court of Admiralty. It runs as follows: "1. If Suit shall be commenced in the Court of Admiralty upon contracts made or other things Personal done beyond the Seas or upon the Sea; no Prohibition to be awarded. 2. If Suit be before the Admiral for Freight, or Mariner's wages, or for breach of Charterparties, or for Voyages to be made beyond the Seas: Though the Charterparty happen to be made within the realm, so as the Penalty be not demanded, a Prohibition is not to be granted. But if the Suit be for the Penalty, or if the question be whether the Charterparty were made or not; or whether the Plaintiff did release or otherwise discharge the same within the Realm, this is to be tried in the King's Court at Westminster, and not in His Court of Admiralty. 3. If Suit be in the Court of Admiralty for Building, Amending, Saving, or necessary Victualling of a Ship, against the Ship itself and not against any party by name but such as for his interest makes himself a party; no Prohibition is to be granted though this be done within the Realm."¹

In 1648 and 1649, during the protectorate of Cromwell, a strong attempt was made to invigorate the somewhat drooping Court; its jurisdiction was enlarged, and three judges were appointed to preside over it.² But at the Restoration, the enactments of the Commonwealth were declared void, and from that time until the appointment of Lord Stowell as judge of the Court, in 1798, its jurisdiction was of little practical importance. But the increase of English commerce, and the great reputation of this judge, gradually directed public attention towards it, and when, in 1848, an Act³ was passed to enlarge its jurisdiction, a new field of usefulness was henceforward open to it. Thus claims and causes of action in respect of mortgages when the ship was once arrested, questions of title in actions of possession, and other causes were brought within its jurisdiction.

¹ A view of the Admiralty Jurisdiction, by John Godolphin, LL.D., 2nd ed., 1685, p. 157.

² Scobell's Acts and Ordinances, c. 112, 1648, c. 23, 1649.

³ 3 & 4 Vict. c. 65.

Then, in 1854,¹ came another Act to improve the practice ; and three years later, barristers and solicitors, in addition to the members of Doctors' Commons and proctors, were admitted to practise before the Admiralty judge. The jurisdiction already given to it was further enlarged in 1861,² in a manner which would have been gratifying to the mediæval civilians who had endeavoured to uphold its powers. So that in the nineteenth century, the necessities of modern commerce brought to the Court a jurisdiction which the common lawyers had for a long time denied that it could legitimately possess.³

The Court of Admiralty is incorporated into the Supreme Court of Judicature, 1873.

The Judicature Act of 1873 brought about a very radical change so far as the constitution of the Court is concerned. By the third section of this Act the Court of Admiralty is constituted an integral portion of the Supreme Court of Judicature, to which its former jurisdiction is transferred.⁴ But by a subsequent section, the old order of things is to a large extent revived, since one separate division is formed, known as the Probate, Divorce, and Admiralty Division of the High Court, to which are assigned all causes and matters which would have hitherto been within the exclusive cognizance of the old Probate, Divorce, and Admiralty Courts.⁵ By the Act of 1875,⁶ provision is also made for the hearing in the Admiralty Division of actions of which it has hitherto taken cognizance concurrently with the Courts of Common Law. Thus, except so far as the name and certain parts of the procedure are concerned, the Admiralty Division occupies practically very much the same position as did the old High Court of Admiralty.

The judge of the Admiralty

The judge of the High Court of Admiralty has hitherto by Royal Warrant exercised in time of war the office of judge of

¹ 17 & 18 Vict. c. 78.

² 24 Vict. c. 10.

³ See the Black Book ; Spelman on Admiralty Jurisdiction ; Coke's Institutes, Part IV.

The Admiralty jurisdiction conferred from time to time upon the county courts should also not be passed over without notice in regarding the Admiralty jurisdiction of our municipal tribunals from an historical point of view.

⁴ J. A. 1873, ss. 3, 16.

⁵ J. A. 1873, ss. 31, 34.

⁶ J. A. 1875, s. 11.

the Naval Prize Court, and his ordinary Court was distinguished from his Prize Court by the name of the Instance Court. But the jurisdiction of the Prize Court in no way has to do with the ordinary jurisdiction of the Admiralty Division of the High Court of Justice, though it must be mentioned in order to keep the ordinary jurisdiction distinct in the reader's mind. Still should occasion arise there is no reason to suppose that any other person than the judge of the Admiralty Division will occupy the position of the judge of the Naval Prize Court.

The High Court of Admiralty being originally purely a maritime tribunal, unconnected with the ordinary Courts of the land, administered justice according to the principles of Maritime Law only. That is to say, universal maritime customs, the sea laws, which were recognised by the different maritime countries, and the civil laws, formed the basis of its powers, though as time went on doctrines known to and acted on by the Common Law judges gradually became mingled with its old maritime principles. And this foundation of much of the present Admiralty jurisdiction in the mediæval sea laws is shown with striking force by a comparison of some modern maritime statutes with the famous codes of former days. For the principles upon which actions for damage to cargo are based as formulated in the Admiralty Court Act of 1861, have their origin in the Customs of the Sea,¹ and the principles which have guided the Admiralty judges of former days, and which have been incorporated in the Merchant Shipping Acts of 1854 can be most unmistakably discerned in the celebrated "Costumes D'Oleron,"² and the provisions of the Amalpitan Table.³ Thus at the present time the Admiralty Division is guided not only by ordinary municipal law, and by those now well recognised principles of maritime law which have become an actual part of the Admiralty law of this country, but also by general maritime customs or principles common to all nations so long as they do not directly conflict

Division
presides
over the
Prize
Court.

The law
adminis-
tered in
the Admi-
ralty
Division.

¹ Black Book of the Admiralty, III., p. 92; The Customs of the Sea, Arts. xviii., xix., xx.

² Les Costumes D'Oleron, Art. 3, Black Book, II. 213.

³ Black Book, IV., 13; La Tabula de Amalfa, Art. 1314, et seq.

with the ordinary municipal law and with the decisions of the other Divisions of the High Court of Justice.¹

**Maritime
liens.**

The doctrine of maritime lien affords an instance of the purely maritime jurisdiction of the Admiralty Division, and it is also of such constant occurrence that it must be shortly touched on here. A maritime lien, which is unknown to the Common Law, and is quite distinct from the ordinary lien by possession, is a right to enforce by legal process certain claims against a *res* or thing itself, whether it be ship, cargo, or freight. As soon as the act has been done which causes the claim to arise and attach itself to the *res*, such claim is enforceable (in the Admiralty Division only) against such *res* into whatever possession it may pass.² It is extinguishable only by payment by cash or bill;³ by bail being given for the amount of the claim;⁴ by sale under the authority of the Court by the destruction of the *res*; by gross want of diligence in enforcing the claim;⁵ or by an agreement to postpone payment of the claim by the person entitled to enforce it.⁶

The Admiralty Court also exercised a limited equitable jurisdiction. It was influenced by equitable considerations, but would not invoke matters foreign to the direct issue—in fact, as between the immediate parties and for the immediate purpose before it, the Court has always been willing to be guided by reasons of equity.⁷ But the Judicature Act of 1873 must necessarily, by constituting the Court of Admiralty a portion of the High Court, have enlarged its equitable jurisdiction, just as it has done that of the Common Law Courts.⁸

¹ *The Neptune*, 3 Hagg. 185; *The Sazonia*, Lush. 410; 31 L. J. Ad. 201. *The Patria*, 2 L. R. 486 (461); 41 L. J. Ad. 28.

² Definition by Lord Tenterden: "a claim or privilege upon a thing to be carried into effect by legal process." See *The Bold Buccleugh*, 7 Moore, P. C. 267 (282); 19 L. T. 232.

³ *The William Money*, 2 Hagg. 136.

⁴ *Kalamazoo*, 15 Jur. 886.

⁵ *The Europa*, Br. & Lush. 89; 2 Moo. P. C. N. S. 1.

⁶ *The Royal Arch*, Swa. 269.

⁷ *The Juliana*, 2 Doda. 504; *The Don Francisco*, Lush. 468, 31 L. J. Ad. 14.

⁸ J. A. 1878, s. 24.

The division, so far as Admiralty business is concerned, consists, first of all, of a judge, who is now an ordinary judge of the High Court, appointed by letters patent from the Crown,¹ and who, whenever the next vacancy which occurs is filled up, will have to take his share in the general judicial business of the High Court.²

The judge
and officers
of the Ad-
miralty
Division.

There is, next, the registrar, who is appointed by the judge, and who, in addition to the important judicial duties which he performs in interlocutory applications, and in cases referred to him to ascertain questions of account, acts also as taxing master.³ Subordinate to the registrar is the chief clerk and his subordinates. Another important official is the marshal and serjeant-at-mace, to whom is intrusted, by himself, his deputies or subordinates, the duty of arresting ships or cargoes ; of keeping them in safe custody ; of appraising ships and cargoes when their value is to be officially ascertained ; and of unloading and transhipping cargoes. He has also to inquire into the sufficiency of persons proposed as sureties when bail is to be given, and to execute the processes generally of the Court.⁴ In many cases, also, Trinity Masters sit with the judge as his assessors ; and in references the registrar is assisted by merchants.

A noteworthy change in this department of the division has also been made by the Judicature Act of 1873, by which district registries have been formed, wherein much of the routine work hitherto necessarily performed in London has been transferred to the provinces,⁵ since the district registrar has the same powers intrusted to him as are exercised by the registrar of this division.⁶

District
registries.

In regard also to appeals from the Admiralty Division, a change of some importance took place in 1873, when the right

Appeals
from the
Admiralty
Division.

¹ J. A. 1873, s. 5.

² J. A. 1875, s. 8.

³ J. A. 1873, s. 77 ; J. A. 1875, s. 8 ; 3 & 4 Vict. c. 66. The registrar of the Admiralty Division also acts as the registrar of the Court of Appeal in Admiralty actions.

⁴ J. A. 1873, s. 77.

⁵ J. A. 1873, s. 60 ; and J. A. 1872, s. 13. Liverpool had a district registrar for Admiralty matters for some years previous to this Act, under 33 & 34 Vict. c. 45.

⁶ J. A. 1873, s. 62. As to the duties of the registrars, see Part II. O. LIV.

of appeal to the Privy Council was abolished, and thenceforward appeals from the Admiralty Division were, like those from any other division of the High Court, to be heard by the Court of Appeal.¹ Consequently also a right of further appeal to the House of Lords exists in Admiralty matters under the Appellate Jurisdiction Act of 1876.²

¹ J. A. 1873, s. 18, sub-s. 12.

² 39 & 40 Vict. c. 59, s. 3. It appears that the House of Lords have intimated that they will only hear appeals on questions of law, not of fact.

PART I.

CHAPTER I.

SECTION I.

Salvage.

SALVAGE in English Maritime Law is the reward which is earned by those who have voluntarily saved or assisted in saving¹ a ship or boat, or their apparel, or any part thereof; or the lives of persons at sea; or a ship's cargo, or any part thereof from peril;² or a wreck from total loss.³ If persons are summoned to the aid of a vessel in distress by those on board, a want of success on their part does not prevent them from being entitled to salvage reward if the vessel is ultimately saved.⁴

I. The Court, by its jurisdiction, has power to decide all salvage actions, whether the claims in them are for services performed on the high seas or in the body of

Definition
of salvage.

Extent of
jurisdiction.

¹ *The Atlas*, Lush. 518 (527); 15 Moo. P. C. 329. *The Jonge Bastian*, 5 C. Rob. 322.

² I.e., peril of any kind occurring at sea, e.g., fire, *The Eastern Monarch*, Lush. 81; pirates, *The Marianne*, 3 Hagg. 206; mutineers, *The Governor Raffles*, 2 Dods. 14; plunder by savages, *The Lady Worsley*, 2 Spk. 253; of remaining sunk, *The Catherine*, 12 Jur. 682.

³ M. S. A. 1854, s. 458; A. C. A. 1861, s. 9. But no salvage can be awarded in respect of lives saved from a foreign ship out of British jurisdiction, except under treaty: *The Willem III.*, 3 L. R. Ad. 487; 25 L. T. N. S. 386.

⁴ *The Undaunted*, Lush. 90; 29 L. J. Ad. 176. *The Edward Hawkins*, Lush. 515; 15 Moo. P. C. 586. *The Nellie*, 29 L. T. N. S. 516. *The Melpomene*, 4 L. R. Ad. 129; 42 L. J. Ad. 45.

a county, or partly in one and partly in the other of these places, or whether a wreck¹ is found at sea or cast on shore, or is partly at sea and partly on the land.²

But a check has been placed on the multiplicity of salvage actions in the High Court. For if an action is brought, and (a) an amount not exceeding 300*l.* is recovered,³ unless such action is brought by order of the judge of a county court having Admiralty jurisdiction,⁴ or of the judge of the Admiralty Division of the High Court; or (b) again, if an action is brought in respect of salved property not exceeding 1000*l.* in value,⁵ unless brought under a similar order by an express or implied agreement made between the parties,⁶ the claimant will not be entitled to costs unless the judge certifies that in his opinion the action was properly brought in the High Court.⁷

¹ Wreck of a ship, and also jetsam, flotsam, and lagan from a ship. See *Palmer v. Rouse*, 3 Hur. & Nor. 505.

² M. S. A. 1854, s. 476.

³ 31 & 32 Vict. c. 71, ss. 3 and 9; *Hewitt v. Cory*, 5 L. R. Q. B. 418; 39 L. J. Q. B. 279.

⁴ As to jurisdiction of county courts, see *post*, Ch. VI.; and 31 & 32 Vict. c. 71, s. 3.

⁵ *I.e.*, when first brought into a place of safety: *The Stella*, 1 L. R. Ad. 340; 36 L. J. Ad. 13. If the value of the property is less than 1000*l.*, but more than 300*l.* is recovered, the Court will exercise jurisdiction: *The Empress*, 3 L. R. Ad. 504; 41 L. J. Ad. 32.

⁶ *The Hermann Wedel*, 39 L. J. Ad. 30; 23 L. T. N. S. 876. The order must be obtained before any proceedings are commenced: *The Loretta*, 40 L. J. Ad. 50; 24 L. T. N. S. 447. But comp. *The Hermann Wedel, sup.*; *The Dart*, 21 L. T. N. S. 765.

⁷ *The Empress*, 3 L. R. Ad. 504; 41 L. J. Ad. 32. The following have been considered reasonable grounds for the exercise of the jurisdiction of the High Court. Less expense, *The Beaumaris Castle*, 40 L. J. Ad. 41; 24 L. T. N. S. 448. Agreement of difficult construction, *The Comte Nesselroode*, Lush. 454; 31 L. J. Ad. 77. Legal difficulties, *The Minnehaha*, Lush. 335; 15 Moo. P. C. 133. *The Bengal*, 3 L. R. Ad. 14; 21 L. T. N. S. 727. Where there are charges of neglect or misconduct against salvors, *The Fenix*, Swa. 13. (Perhaps) suits to enforce bonds given under M. S. A. 1854, s. 468, to Receivers of Wreck when the amount is within county courts jurisdiction, *The John Evans*, 43 L. J. Ad. 9; 30 L. T. N. S. 308. General laches or estoppel of defendants, *The Dart*, 21 L. T. N. S. 465. O. LV. of the orders framed under the Judicature Act has in no way interfered with the action of these statutes as to costs: *Garnett v. Bradley*, 2 L. R. Ex. D. (C. A.) 349; 46 L. J. Ex. 545.

And the jurisdiction of the High Court is absolutely barred if the sum claimed does not exceed 200*l.*, since that amount can be awarded by justices in respect of services performed within or without the United Kingdom.¹ And if the sum claimed exceed this figure, but less is actually recovered, the claimants will not be entitled to costs without a certificate of the judge of the Admiralty Division.²

But the High Court has concurrent jurisdiction in respect of any salvage service rendered within the bounds of the Cinque with the Court of the Cinque Ports.³

II. The principles upon which the Court acts in salvage cases are few and simple.

The services must be voluntary,⁴ and not rendered as part of the claimant's legal duty.

The crew, therefore, of a salved ship, from the nature of their employment, cannot be entitled to reward unless their contract of service be ended by a *bond fide* abandonment of the ship at sea⁵ or by their discharge by the actual or implied order of the master.⁶ Passengers fall within this rule, since in a case of common danger they are bound to assist in saving the ship.⁷

Likewise pilots are not entitled to salvage reward except Pilots.

¹ M. S. A. 1854, s. 460; 25 & 26 Vict. c. 63, s. 49 (1). The provisions of M. S. A. 1854, enlarged by 25 & 26 Vict. c. 63, giving jurisdiction to justices when the value of the salved property did not exceed 1000*l.*, seem so far as they barred the jurisdiction of the High Court to be repealed by 31 & 32 Vict. c. 71, s. 3, for as has been pointed out, under some circumstances, the High Court may try county court actions, and the limit of 1000*l.* is now the same in claims before justices and county court judges: *The Empress*, 3 L. R. Ad. 502; 41 L. J. Ad. 32; *The Hermann Wedel*, 39 L. J. Ad. 30; 23 L. T. N. S. 876.

² M. S. A. 1854, s. 460; 25 & 26 Vict. c. 63, s. 49. As to what will entitle a plaintiff to sue in the Superior Court, see *ante*, note 7, p. 10.

³ M. S. A. 1854, s. 460; *The Jeune Paul*, 1 L. R. Ad. 336; 37 L. J. Ad. 11.

⁴ *The Neptune*, 1 Hagg. 236.

⁵ *The Florence*, 16 Jur. 572.

⁶ *The Warrior*, Lush. 476; *The Le Jouet*, 3 L. R. Ad. 534; 41 L. J. Ad. 26.

⁷ *The Vrede*, Lush. 322; 30 L. J. Ad. 209. *Newman v. Walters*, 3 Bos. & P. 612.

The principles which govern salvage awards.

Services must be voluntary. Crews of ships in danger.

Maritime
officials.

under circumstances when there is extraordinary danger and labour in the discharge of their duty¹ so as to entitle them to a reward over and above simple remuneration for work done, or when they do some act out of the course of their ordinary duty, or unless when they come on board an unseaworthy vessel they expressly declare that they come as salvors as well as pilots.² Maritime officials cannot rank as salvors except for labours outside the scope of their proper employment.³ Generally a ship's agent will not be entitled to salvage unless the agency and the salvage services are clearly distinguishable, though both may be united in one claim.⁴

Queen's
ships.

It is the duty of Her Majesty's ships to render assistance to vessels in peril,⁵ so no claim except for the personal and important services of the officers and crew can be entertained, and that not without the consent in writing of the Lords of the Admiralty.⁶

Tugs.

Steam tugs or vessels engaged to tow a ship can only claim as salvors as regards such ship, for services rendered outside the scope of their duty, or when they have been freed from the obligations under which they are placed by their original contract, as by a *vis major* or by accidents not

¹ *The General Palmer*, 2 Hagg. 176; *The Jonge Andries*, Swa. 226; *The Hedwig*, 1 Spk. 19.

² *The Joseph Harvey*, 1 C. Rob. 306; *The Frederick*, 1 W. Rob. 16; *The Hebe*, 2 W. Rob. 246; *The Jonge Andries*, *sup.*; *The Æolus*, 4 L. R. Ad. 28; 42 L. J. Ad. 14.

³ *The Aquilla*, 1 C. Rob. 46; *The Vine*, 2 Hagg. 1; *The London Merchant*, 3 Hagg. 394; *The Clifton*, 3 Hagg. 117. As to duties of Receivers of Wreck, see Kay on Shipmasters and Seamen, vol. ii. 1106; M. S. A. 1854, s. 439; and Coastguardsmen, *ib.* 1037; and 18 & 19 Vict. c. 91, s. 20.

⁴ *The Purissima Concepcion*, 3 Hagg. 181; *The Cargo ex Honor*, 1 L. R. Ad. 87; 35 L. J. Ad. 113.

⁵ M. S. A. 1854, s. 484.

⁶ M. S. A. 1854, s. 485; *The Ervell Grove*, 3 Hags. 209; *The Rapid*, 3 Hagg. 419; *The Rosalie*, 1 Spk. 189; *The Earl of Eglinton*, Swa. 7; *The Alma*, Lush. 377; *The Nile*, 4 L. R. Ad. 449; 44 L. J. Ad. 38. A despatch boat employed solely in civil service is within this rule: *The Cargo ex Woosung*, 1 L. R. P. D. 260; 44 L. J. Ad. 45.

contemplated when the contract was entered into.¹ The circumstances of each particular claim must be tested by this rule in order to determine whether towage have been changed into salvage services. Thus, the time of year at which the contract was made and the weather which follows,² as a very severe storm, but not simply rough weather, may support a claim.³

When ships sailing together, and in association on a common enterprise and for their common benefit, and under an agreement to render each other assistance, give such help, it is not to be considered in the nature of salvage service.⁴ Possibly a clearly proved custom among consorts to this effect would equally bar a claim for salvage reward.⁵

When the salving ship or salvaged property belong to one owner there can be no claim for salvage services, and the charterer of a ship who has the possession and control over the ship is in the same position as an original owner if such ship renders service to his property.⁶ But this rule does not apply to ordinary charterers and to temporary owners;⁷ nor yet to the seamen on board the salving ship, unless their services can be considered as within the scope of their ordinary duties.⁸ Neither is it applicable when a cargo on board is saved which belongs to persons other than the owner of the two vessels,⁹ nor where the owner of

¹ *The Princess Alice*, 3 W. Rob. 138; *The Minnehaha*, Lush. 335; 15 Moo. P. C. 133; 30 L. J. Ad. 211; *The Lady Egidia*, Lush. 513; *The Annapolis*, Lush. 355; *The J. C. Potter*, 3 L. R. Ad. 292; 40 L. J. Ad. 9. And see post, "Towage."

² *The White Star*, 1 L. R. Ad. 68.

³ *The True Blue*, 1 W. Rob. 180; *The Albion*, Lush. 282; *The Sarasoga*, Lush. 321; *The Galatea*, 1 L. R. Ad. 68; *The J. C. Potter*, *sup.*; *The Strathnaver*, 1 L. R. App. Cas. 58; 34 L. T. N. S. 148.

⁴ *The Waterloo*, 2 Dods. 433; *The Zephyr*, 2 Hagg. 43.

⁵ *The Swan*, 1 W. Rob. 68; *The Red Rover*, 3 W. Rob. 150; *The Africa*, 1 Spk. 299.

⁶ *The Maria Jane*, 14 Jur. 857; *The Collier*, 1 L. R. Ad. 83.

⁷ *The Waterloo*, 2 Dods. 433; *The Collier*, *sup.*; *The Scout*, 3 L. R. Ad. 512; 41 L. J. Ad. 42.

⁸ *The Sappho*, 3 L. R. Ad. 142; 3 L. R. P. C. 690; 40 L. J. Ad. 47.

⁹ *The Miranda*, 3 L. R. Ad. 561; 41 L. J. Ad. 82.

one ship is a co-owner of another so far as regards the other co-owner.¹ And in cases of collision those on board each of the colliding ships are bound to render assistance if possible one to the other.²

The nature
of efficient
salvage
services.

Since salvage is a reward for benefits actually conferred, a claimant must directly save,³ or assist in saving,⁴ the object in peril, except when actually summoned to assist.⁵ Services which tend, however slightly, to the ultimate salvation of the imperilled object, if meritorious, entitle those who render them to salvage reward.⁶ And even if the services actually rendered have been of no avail, but further useful services would have been performed if they had not been put out of the power of those desirous of giving assistance by those on board the endangered ship, some salvage reward is in that case given.⁷

The object
saved must
have been
in peril.

As regards the object⁸ in respect of which salvage is claimed it must have been in peril, that is, some danger to it must have been reasonably possible without the salvor's assistance⁹ had been utilized, all the surrounding circumstances being taken into consideration.¹⁰ But if signals are in any degree ambiguous, the Court will always interpret them according to the condition of the signalling ship.¹¹

¹ *The Caroline*, Lush. 334.

² *The Cargo ex Capella*, 1 L. R. Ad. 356; 16 L. T. N. S. 800; 33 & 34 Vict. c. 85, s. 16. But this does not bar an innocent ship from recovering salvage: *The Hannibal*, 2 L. R. Ad. 53; 37 L. J. Ad. 12.

³ *The Annapolis*, Lush. 300; *The Woburn Abbey*, 21 L. T. N. S. 707; *The Zephyrus*, 1 W. Rob. 329; *The India*, *ib.* 406; *The Edward Hawkins*, Lush. 515; 15 Moo. P. C. 486; *The Chetah*, 2 L. R. P. C. 205 (212); 5 Moo. P. C. N. S. 278.

⁴ *The Atlas*, Lush. 518; 15 Moo. P. C. 329.

⁵ See *ante*, p. 9.

⁶ *The E. L.*, 1 Spk. 63; *The Santiflore*, *ib.* 231; *The Aztecs*, 21 L. T. N. S. 797; *The Eintracht*, 29 L. T. N. S. 851.

⁷ *The Maude*, 36 L. T. N. S. 26.

⁸ *The Mary*, 1 W. Rob. 457.

⁹ *The Charlotte*, 3 W. Rob. 68; *The Albion*, Lush. 282; *The Ellora*, Lush. 550; *The Persia*, 1 Spk. 166; *The Strathnaver*, 1 L. R. App. Cas. 58; 34 L. T. N. S. 148.

¹⁰ *The Isabella*, 3 Hagg. 427; *The Westminster*, 1 W. Rob. 321 (cargo); *The Bomarsund*, Lush. 77; *The Cairo*, 4 L. R. 184; 43 L. J. Ad. 33 (life).

¹¹ *The Towan*, 2 W. Rob. 259; *The Little Joe*, Lush. 88; *The Bo-*

In determining the amount, if any, of salvage reward to be awarded, which is wholly in the discretion of the Court, there are three chief elements to be considered: (a) the extent of the peril of the object saved; (b) its actual value; (c) the nature of the salvor's services. But a contract as to the amount of the reward made either between persons saved or the owners of, or of those having authority over, the saved property, is binding on the parties as to the subject-matter of such agreement,¹ unless it is inequitable,² and unless one of the parties are public officials, who are bound to render salvage services, for which, however, they will be properly rewarded when they claim in respect thereof.³ Every agreement also by which seamen abandon their right to salvage is inoperative,⁴ unless by the terms of their contract of service, which must be most clearly proved,⁵ they engage themselves to a ship to be employed on salvage duty, and in return for their labour agree to receive a fixed and equitable remuneration.⁶

An agreement will also be set aside as inequitable unless it is made with fairness and impartiality by both parties, who must from the very nature of such a maritime contract be prepared to take the risk of changing circumstances.⁷ Both parties also must be capable of understanding the nature of the agreement into which they enter.⁸ The following circumstances have caused agreements to be set aside under this rule: Where the award

marsund, sup.; *The Hedwig*, 1 Spk. 19; *The Racer*, 30 L. T. N. S. 904.

¹ *The Mulgrave*, 2 Hagg. 77; *The True Blue*, 1 W. Rob. 176.

² *The Enchantress*, Lush. 93; 30 L. J. Ad. 15. As to services outside the terms of the agreement, see *The Boyne and The Cadiz*, 35 L. T. N. S. 602.

³ *The Cargo ex Woosung*, 1 L. R. Ad. D. 260; 44 L. J. Ad. 45.

⁴ *M. S. A.* 1854, s. 182; *The Rosario*, 1 L. R. Ad. D. 41; 35 L. T. N. S. 816; By Maritime Law, see *The Pride of Canada, infra*, 9 L. T. N. S. 546.

⁵ *The Pride of Canada*, Br. & Lush. 208.

⁶ 25 & 26 Vict. c. 63, s. 18; *The Ganges*, 2 L. R. Ad. 370; 38 L. J. Ad. 61. The Court has power in its discretion to set such a contract aside, and regards all such agreements very jealously.

⁷ *The Waverley*, 3 L. R. Ad. 369; 40 L. J. Ad. 42.

⁸ *The True Blue*, 1 W. Rob. 176.

was futile;¹ concealment of material facts;² powerlessness to resist salvors' demands;³ and fraud.⁴ In all cases connected with salvage agreements, the amount of the award is very important evidence in support of the validity or invalidity of such agreements. Masters of a ship can bind the owners⁵ but not the crew, unless they assent to the agreement at the time or subsequently ratify it.⁶ Those who set up such an agreement in an action for salvage must first clearly prove it; after which those who impugn its validity must establish facts sufficient to avoid it.⁷

The peril
of the ob-
ject saved.

As regards the elements which are considered in granting a salvage reward, the first is the peril to which the object was exposed. The greater the peril, the greater is the reward due to the salvors.⁸ But it is now decided that when a vessel is derelict, that is, abandoned without hope of recovery, this fact is only to be considered as an ingredient in the degree of danger to which the property was exposed, all the attendant circumstances being also duly considered.⁹

Its value.

Secondly, the value of the object saved has to be considered, hence life ranks higher than any property.¹⁰ But

¹ *The Phantom*, 1 L. R. Ad. 58; 14 W. R. 774.

² *The Canova*, 1 L. R. Ad. 54; 12 Jur. N. S. 528.

³ *The Cargo ex Woosung*, 1 L. R. Ad. D. 260; 44 L. J. Ad. 45; *The Medina*, 2 L. R. Ad. D. 272; 35 L. T. N. S. 799.

⁴ *The Westminster*, 1 W. Rob. 235; *The Crus*, 5 Lush. 583; *The Kingalock*, 1 Spk. 265; *The Generous*, 2 L. R. Ad. 57; 37 L. J. Ad. 37.

⁵ *The Britain*, 1 W. Rob. 40; *The Africa*, 1 Spk. 300; *The Ellen and George*, Swa. 368.

⁶ *The Sarah Jane*, 2 W. Rob. 110.

⁷ *The Salacia*, 2 Hagg. 265; *The Ellen and George*, Swa. 268.

⁸ *The Chetah*, 2 L. R. P. C. 205; 5 Moo. P. C. N. S. 278; *The True Blue*, 1 L. R. P. C. 250 (256); 4 Moo. P. C. N. S. 96. An element of derelict is that the property therein vests *de jure* in the Crown, subject to the right of salvors to remuneration: *The Kathleen*, 43 L. J. Ad. 39; 31 L. T. N. S. 204.

⁹ *The Aquila*, 1 W. Rob. 37; *The True Blue*, *sup.*; *The Florence*, 16 Jur. 572 (578); *The Clarisse*, Swa. 129; *The Rasche*, 4 L. R. Ad. 127; 42 L. J. Ad. 41; *The Scindia*, 1 L. R. P. C. 241; 35 L. J. P. C. 53.

¹⁰ *The Bartley*, Swa. 198; *The Coromandel*, *ib.* 205; *The Eastern Monarch*, Lush. 81.

whilst value must be fully regarded, it will not be allowed to raise the amount of reward out of proportion to the peril to which the salvaged object has been exposed, or to the services actually rendered by the salvors.¹ And a larger proportion of the property, or of its value, is awarded to salvors where it is small than where it is large, so as to afford adequate compensation to the salvors.²

The nature of the salvors' services, that is the peril to life or property which this enterprise causes, the labour, the skill, and the courage shown by the rescuers, and the value or power of the instruments used by them, are the third element for consideration.³ Consequently services which require no more than ordinary skill or labour must receive no more than ordinary and simple remuneration.⁴ When loss or damage has happened to a vessel engaged in a salvage service, it is always presumed by the Court that it was caused in such service.⁵ Actual losses and expenses incurred by the salvors must of course be repaid over and above any mere reward.⁶ The possibility or risk of loss must also be duly weighed, as of the loss of insurance by the deviation of the ship; but such possibility must not be too remote.⁷

But the concurrence of all or the absence of any of the

¹ *The Fowell Grove*, 3 Hagg. 221; *The Industry*, 3 Hagg. 208; *The William Beckford*, 3 C. Rob. 355; *The Glenduror*, 3 L. R. P. C. 589; 24 L. T. N. S. 499; *The Amerique*, 62 L. R. P. C. 468; 31 L. T. N. S. 854.

² *The Bleyden Hall*, 1 Dods. 421.

³ *The William Beckford*, 3 C. Rob. 355; *The Eastern Monarch*, Lush. 81; *The Fusileer*, Br. & L. 350; 3 Moo. P. C. N. S. 84; *The Glenduror*, 3 L. R. P. C. 589. Steamers would thus receive high rewards. *The Kingalock*, 1 Spk. 267; *The Spirit of the Age*, Swa. 286; *The Otto Hermann*, 33 L. J. Ad. 89; *The Palmyra*, 25 L. T. N. S. 885.

⁴ *The Watt*, 2 W. Rob. 70; *The Lively*, 3 W. Rob. 64.

⁵ *The Thomas Blyth*, Lush. 16.

⁶ *The Salacia*, 2 Hagg. 271; *The Jane*, id. 243; *The Houthandel*, 1 Spk. 25; *The Norden*, id. 85; *The Saratoga*, Lush. 318; *The James Armstrong*, 4 L. R. Ad. 380; 33 L. T. N. S. 390. Except in the case of ships of the Crown: *M. S. A.* 1854, s. 484.

⁷ *The Scindia*, 1 L. R. P. C. 241; 35 L. J. P. C. 53; *The Sir Ralph Abercrombie*, 1 L. R. P. C. 454; 4 Moo. P. C. N. S. 374.

above elements, after a full consideration by the Court of the interests of commerce and navigation, must be the ultimate test of the value of every salvage service.¹

Consequences of salvors' misconduct, &c.

Salvors may by their acts, that is to say, through misconduct, error of judgment, or want of skill, debar themselves from receiving a part or the whole of the reward to which they would be otherwise entitled.² The same circumstances, in different degrees, may cause the forfeiture of the whole or part of the reward, though strictly speaking the want of skill or misconduct is but the absence, to a less or greater degree, of one of the essential elements of a salvage service.

But misconduct where success has been finally achieved, in order to cause a total forfeiture of the reward, must be shown by the parties who rely upon it to be without reasonable doubt wilful and criminal.³ If it does not reach this degree of wrongfulness it will only lessen the amount of the reward.⁴ It is a simple question of fact as to what acts will be regarded as falling within the term misconduct, or want of skill or error of judgment, so as to cause forfeiture of the whole or a part of the reward. But they have been held to include such acts as non-delivery of wreck⁵ to Receiver of Wreck; improper retention of property;⁶ unlawful obtrusion of assistance.⁷ Yet, as regards this last matter, if a vessel is derelict and abandoned, without any intention of return by the master and crew, the

¹ *The Clifton*, 3 Hagg. 120; *The Industry*, ib. 208; *The William Beckford*, 3 C. Rob. 355; *The Glenduror*, 3 L. R. P. C. 592.

² *The Duke of Manchester*, 6 Moo. P. C. 91; *The Neptune*, 1 W. Rob. 297.

³ *The Charles Adolphe*, Swa. 156; *The Atlas*, Lush. 518 (528); 15 Moo. P. C. 329.

⁴ *The Atlas*, sup.; *The Magdalen*, 31 L. J. Ad. 22; 5 L. T. N. S. 807.

⁵ M. S. A. 1854, s. 450. This section does not apply to the case of a barge in the Thames delivered to owner: *The Zeta*, 4 L. R. Ad. 460; 44 L. J. Ad. 42.

⁶ *The Lady Worsley*, 2 Spk. 255.

⁷ *The Barefoot*, 14 Jur. 841; *The Glasgow Packet*, 2 W. Rob. 313; *The Champion*, Br. & L. 69.

first band of salvors have a full legal right to remain solely in possession of the wreck;¹ or a second band, if the first have abandoned it.²

There must also be included improper refusal of further assistance; the test of the propriety or impropriety of such refusal being whether or not such further assistance was required to ensure the safety of the imperilled property;³ unnecessarily taking a vessel to an inconvenient port, unless it were done to prevent a deviation from the course of the salvors' ship.⁴

There must also be included in this class neglect to give prompt help⁵ as well as exorbitant demands⁶ before giving such help, and an error of judgment as to the harbour to which the ship is taken, if injury is thereby caused.⁷ Salvors may raise a claim against themselves by the owners of the salvaged property as well as a loss of salvage reward, if through their carelessness injury is done to such property; and if the salvaging ship has rendered its services necessary through its own prior wrongdoing, it will not be allowed to take advantage of it and to claim salvage.⁸

As to the apportionment of the salvage reward there is no fixed proportion of the sum awarded to be allotted to the various classes of salvors, and the amount to be given

Apportion-
ment of
sum
awarded.

¹ *The Champion*, Br. & L. 69.

² *The India*, 1 W. Rob. 406; *The Clarisse*, Swa. 12.

³ *The Bleyden Hall*, 1 Dods. 414; *The Maria*, Edw. 177; *The Dossutei*, 10 Jur. 865; *The Pickwick*, 16 Jur. 670; *The Dantzic Packet*, 3 Hagg. 385; *The Glasgow Packet*, *id.* 386; *The Kathleen*, 43 L. J. Ad. 39; 31 L. T. N. S. 204.

⁴ *The Esperance*, 1 Dods. 48; *The Orbona*, 1 Spk. 161; *The Martin Luther*, Swa. 287.

⁵ *The City of Edinburgh*, 2 Hagg. 333.

⁶ *The John and Thomas*, 1 Hagg. 157, *n.*

⁷ *The Perla*, Swa. 230.

⁸ *The Thetis*, 2 L. R. Ad. 365; 38 L. J. Ad. 42; *The C. S. Butler*, 4 L. R. Ad. 178; 43 L. J. Ad. 17; *The Glengaber*, 3 L. R. Ad. 534; 41 L. J. Ad. 84. But this rule does not apply to a vessel quite unconnected with any misconduct of the ship complained of, but belonging to the same owners: *The Diana*, 31 L. T. N. S. 203. And the owners are bound by the negligent act of a master. See *The Thetis*, *sup.*

to each person is entirely in the discretion of the Court according to the circumstances of each particular case.¹

The most common division of the several classes of salvors is into, (a) the officers and crew of a ship; (b) persons who assist other than the above; (c) the owners of a ship.

Crews.

When some of the crew of a salving ship are put on board a ship in distress, those left on board the salving ship are entitled to share in the apportionment of the reward, but to a less amount than those who have left it, especially if the imperilled ship has been in great danger.²

The salvage reward which has to be divided among the officers and men will generally be distributed according to their rank,³ unless some one individual has performed more meritorious services than the others.⁴

Persons who assist are generally rewarded on a less liberal scale than seamen,⁵ unless they are of a superior station or of great capacity.⁶

Owners.

The shares to which the owners of a salving ship are entitled depend upon the risk to which she has been exposed in consequence of rendering help to an imperilled object, the value of such help, and her actual pecuniary value.⁷

¹ *The Thetis*, 3 Hagg. 14 (62).

² *The Jane*, 2 Hagg. 338; *The Sarah Jane*, 2 W. Rob. 110 (115); *The Roe*, Swa. 84; *The Saint Nicholas*, Lush. 29; *The Charles*, 3 L. R. Ad. 536; 26 L. T. N. S. 594; *The Golindrina*, 1 L. R. Ad. 334. But not on a light ship: *The Emma*, 1 W. Rob. 157.

³ *The Earl Grey*, 3 Hagg. 363; *The Columbine*, 2 W. Rob. 186; *The Two Friends*, id. 353; *The Martin Luther*, Swa. 290; *The George Dean*, id. 291; *The Enchantress*, Lush. 96; 30 L. J. Ad. 15.

⁴ *The Hope*, 3 Hagg. 425; *The Albion*, id. 524; *The Nicolina*, 2 W. Rob. 175; *The Golendrina*, 1 L. R. Ad. 334.

⁵ *The Salacia*, 2 Hagg. 269; *The Hope*, 3 Hagg. 425 (passengers); *The Perla*, Swa. 230.

⁶ *The Nicholas Witzon*, 3 Hagg. 369 (pilot); *The Pentucket*, Lush. 505; 7 L. T. N. S. 257.

⁷ *The Perla*, 1 Swa. 232. One half to owners, master one quarter, remainder to crew: *The Enchantress*, Lush. 96; 30 L. J. Ad. 15. Very frequently one half: *The Howard*, 3 Hagg. 256, n.; *The Palmyra*, 25 L. T. N. S. 884. And see "Instructions of Board of Trade to Receivers of Wreck," App. III.

Where several bands of salvors are entitled to participate in the reward, the amount to be allotted to each is in the discretion of the Court; but the rule naturally is, that it should be apportioned according to the value of the services which have been rendered.¹

The apportionment among several salvors, when the services have been rendered within the United Kingdom, if the amount ascertained to be due, by agreement or by the award of justices, does not exceed 200*l.*, may be made by the Receiver of Wreck for the district, on the application of the parties liable to pay the same.²

If the amount exceeds this sum, or the services have been rendered outside the United Kingdom, any Court having Admiralty jurisdiction may then apportion the amount which has been finally ascertained in such a manner as it thinks right and just.³

If the sum is (a) undisputed, and payment is not made within twenty days, or (b) if it is disputed, and the sum is less than 50*l.*, or (c) if the amount is disputed, and appeal proceedings are not instituted within twenty days, the Receiver may sell the property, or a sufficient part thereof, and from the proceeds pay to those entitled the amount of their salvage reward, and all attendant expenses, and hand over the surplus to those who are entitled to receive it.⁴

Again, in the case of one of Her Majesty's ships, or in that of any other ship, if the salvor in this last case is willing to abandon his lien, the master or person in charge

¹ As to the circumstances under which the different bands are entitled, see *ante*, p. 20. For examples of apportionment, *The Jonge Bastian*, 5 C. Rob. 322; *The Albion*, 2 Hagg. 255; *The Charlotte*, *id.* 361; *The Queen Mab*, 3 Hagg. 241; *The Pride of Canada*, Br. & L. 209; *The Undaunted*, Lush. 90; 29 L. J. Ad. 176; *The England*, 2 L. R. P. C. 253; 38 L. J. Ad. 9; *The Eastern Monarch*, Lush. 81; *The Andrina*, 3 L. R. Ad. 286; 28 L. T. N. S. 488 (derelict).

² M. S. A. 1854, ss. 466, 467. As to the manner of distribution, see "Instructions of the Board of Trade to Receivers of Wreck," *post*, App. III.

³ M. S. A. 1854, s. 498. See App. I.

⁴ M. S. A. 1854, s. 486.

of the salved ship may agree to abide by the judgment of a competent Court, and give security for such an amount as may be agreed on between the parties, and such agreement shall bind the ship, her cargo and freight, and their owners.¹

A maritime lien.

Salvors have a maritime lien on the property saved.² Where ship, cargo, and freight are saved, each must bear its own share of the salvage reward according to its value.³ Where lives on board a ship are saved, there is a lien on the ship, cargo, and freight, in respect of the reward due for such service.⁴

A lien extends to the whole of a ship whilst she remains entire, and to all parts of her in case of wreck.⁵ It travels with her into whatever hands she may come, whether those of a purchaser or judgment creditor,⁶ and can only be defeated by the want of due diligence on the part of the claimant. Due diligence has been thus defined: "Not the doing of everything possible, but the doing of that which under ordinary circumstances, and with regard to expense and difficulty, could be reasonably required."⁷ It extends to the appurtenances⁸ of a ship; to accretions in value arising from subsequent repairs;⁹ to the whole of the freight also which has actually accrued,

¹ See M. S. A. 1854, ss. 497 and 486. As to salvage services rendered by Her Majesty's ships, see M. S. A. 1854, s. 484; *et seq. post*, App. I.

² *The Eleanor Charlotte*, 1 Hagg. 156; *The Gustaf*, Lush. 506; 31 L. J. Ad. 207.

³ *The Westminster*, 1 W. Rob. 233; *The Emma*, 2 W. Rob. 319. Value at port where services end. *The Stella*, 1 L. R. Ad. 340; 36 L. J. Ad. 13; *The George Dean*, Swa. 290; *The Norma*, Lush. 124 (freight). As to the practice on valuation, see *post*, Part II.

⁴ *The Fusileer*, Br. & L. 341; *The Cargo ex Schiller*, 2 L. R. Ad. D. 145.

⁵ *The Neptune*, 1 Hagg. 238; *The Reliance*, 2 W. Rob. 122; *The Bold Buccleugh*, 7 Moo. P. C. 267.

⁶ *The Mellona*, 3 W. Rob. 21; *The Charles Amelia*, 2 L. R. Ad. 630; 30 L. J. Ad. 172.

⁷ *The Europa*, 2 Moo. P. C. N. S. 1; 32 L. J. Ad. 188.

⁸ *The Alexander*, 1 Dods. 278; *The Dundee*, 1 Hagg. 104.

⁹ *The Aline*, 1 W. Rob. 111.

that is, the gross freight, less agreed deductions.¹ Cargo may be arrested for freight due in respect of its carriage.

But the arrest of a ship consequent upon a maritime lien, which belongs to a company against which a winding-up order has been issued in the Chancery Division, is void under sec. 163 of the Companies Act, 1862, unless there are other parties interested, as mortgagees in possession, over whom the Court in the winding up has no jurisdiction.²

A receiver of wreck has power to detain any property in respect of which salvage is due until payment is made or process is issued by a competent Court to detain the ship. But he may release such ship when proper security is given, and when the claim exceeds 200*l.* the Admiralty Division may determine any question as to the amount of the security.³

SECTION II.

Towage.

Towage is a contract of service, the essential condition of which is that the tug shall be competent to tow for the purpose of expediting the voyage of the towed vessel.⁴ The Admiralty Division has by two Acts of Parliament a limited jurisdiction over such contracts.⁵ The Court has (a) jurisdiction to decide all claims and demands in the nature of towage; that is, it will enforce payment for towage services, but in the case of agreements for towage, ^{A contract of service.} ^{Duties of a tug.}

¹ *The Leo*, Lush. 444; 31 L. J. Ad. 75; *The Orpheus*, 3 L. R. Ad. 348; 40 L. J. Ad. 24.

² *In re the Australian Steam Co., Ex parte Baker*, 20 L. R. Eq. 525; 44 L. J. Ch. 676; *Re the Rio Grande Steamship Co.*, 5 L. R. Ch. D. 282; 46 L. J. Ch. 277.

³ M. S. A. 1854, s. 468. When property is once released by Receiver, salvors cannot detain or arrest it: *The Lady Katherine Braham*, Lush. 404; 5 L. T. N. S. 693.

⁴ *The Princess Alice*, 3 W. Rob. 138.

⁵ 3 & 4 Vict. c. 65, s. 56; A. C. A. 1861, s. 7. County courts have jurisdiction over claims up to 150*l.*, 31 & 32 Vict. c. 71, s. 3.

the amount of remuneration to be received by the tug must be reasonable and certain;¹ in other cases, the tug must have fully performed its duty,² arising from the obligation to tow, and to be remunerated accordingly. From this contract the tug is not released by unforeseen difficulties, but only by a *vis major* or un contemplated accidents, rendering the fulfilment of its contract impossible.³ But even when the contract is dissolved by such circumstances it is the duty of the tug to remain by the vessel to which she has engaged herself, in order to render all assistance that is in her power.⁴

But when a breach of the contract has occurred, it may like any other contract be waived by the subsequent conduct of the contracting parties.⁵ If (b) in the course of the fulfilment of the contract either vessel by its wrongful act or negligence causes damage to the other, or causes the latter to inflict damage on another ship, such wrongdoer is liable in damages, unless there was contributory negligence on the part of the vessel injured.⁶ But during the course of the employment, under ordinary circumstances the tug must obey the orders of the pilot or the master of the ship in tow, and is not responsible for his mismanagement,⁷ unless the direction is left to the tug and the governing power is in her.⁸

¹ *The Martha*, Lush. 214.

² *The Edward Hawkins*, Lush. 515.

³ *The Mennehahn*, Lush. 345.

⁴ *The J. C. Potter*, 3 L. R. Ad. 392; 40 L. J. Ad. 9.

⁵ *The Lady Flora Hastings*, 3 W. Rob. 122.

⁶ *The Julia*, Lush. 224; 14 Moor. P. C. C. 210; *The Night Watch*, Lush. 542; *The Industrie*, 3 L. R. Ad. 303; 40 L. Ad. 26. This case seems to overrule the previous doctrine, that it must be a case of collision. See the *Steamer Webb*, 14 Wall. 406 (A.); *The Energy*, 3 L. R. Ad. 48; 39 L. J. Ad. 25; *Smith v. The St. Lawrence Iron Boat Co.*, 5 L. R. P. C. 308; 28 L. T. N. S. 885.

⁷ *The Duke of Sussex*, 1 W. Rob. 270; *The Julia*, *sup.*; *The Energy*, *sup.* The compulsory employment of a pilot, if damage arises through his negligence, takes away all liability from owners. See *The Ocean Wave*, 3 L. R. P. C. 205; 6 Moo. P. C. C. N. S. 492; M. S. A. 1854, s. 388. See p. 30.

⁸ *The Aracan*, 6 L. R. P. C. 127; 43 L. J. Ad. 30. If damage is caused by improper navigation, and not by a mere breach of con-

SECTION III.

Damage, and Breach of Duty or Contract in the Carriage of Goods.

The subject of damage may be divided into four parts, The divisions of this subject. that is to say, damage: I. To persons, II. To ships, III. To things other than the foregoing and cargo, as wharves, piers, &c., IV. To cargo, under which head it is convenient to include damage by breach of contract or of duty in the carrying of cargo.

The jurisdiction of the Admiralty Division over actions for damage is based at the present time partly on the original maritime jurisdiction¹ of the High Court of Admiralty, partly on two modern statutes. The material portions of these are as follows: "The High Court of Admiralty shall have jurisdiction to decide all claims and demands whatsoever for damage received by any ship or seagoing vessel, and to enforce the payment thereof whether such ship or vessel may have been within the body of a county or upon the high seas at the time when the damage was received in respect of which such claim is made."² And "The High Court of Admiralty shall have jurisdiction over any claim for damage done by any ship."³ The jurisdiction of the Court.

The Court has jurisdiction *in rem* or *in personam* against the person who may have caused the damage, and if one remedy has proved insufficient, the other may be employed.⁴

tract: M. S. A., 1862, s. 54, sub-s. 4, applies: *Wahlberg v. Young*, 45 L. J. C. P. D. 783.

¹ As to this, see judgment of Justice Story, in *De Lovio v. Boit*, 2 Gallison, 396 (A.); Introduction to Pritchard's Digest.

² 3 & 4 Vict. c. 65, s. 6.

³ A. C. A. 1861, s. 7.

⁴ A. C. A. 1861, s. 65; *The John and Mary*, Swa. 471; *The Zephyr*, 11 L. T. N. S. 351; *The Orient*, 3 L. R. P. C. 696; 40 L. J. Ad. 29. But no action will lie against a pilot: *The Alexandria*, 3 L. R. Ad. 574; 44 L. J. Ad. 94.

Actions
against
ships of the
Sovereign.

The jurisdiction over damage by collision extends to foreign and British ships in foreign and British waters.¹ But since the Court cannot enforce a writ against a ship of the Crown, the Lords of the Admiralty voluntarily instruct the Admiralty Proctor to enter an appearance for the commander of any ship of the Crown when an action, as is usual, is brought *in personam* against him for damage done by the ship of which he was in charge.² International courtesy also causes an exception to the general rule in the case of ships belonging to a foreign sovereign as far as regards actions *in rem*, unless his international privileges are waived by the employment of a ship for commercial purposes.³

Damage
to persons;

I. Actions may be brought by any person who has received any kind of injury from a ship,⁴ or by the personal representatives of one whose death has been caused by the wrongful act of a ship.⁵

to ships,
&c.

II. and III. Under the statutes already mentioned all injuries by ships to ships, by ships to things other than ships, or by other objects to ships, wherever the damage is done, are included;⁶ and if owing to the negligence of

¹ *The Bilbao*, Lush. 149; 3 L. T. N. S. 338; *The Diana*, Lush. 539; 32 L. J. Ad. 57; *The Courier*, Lush. 541.

² M. S. A. 1854, s. 527; *The Athol*, 1 W. Rob. 374.

³ *The Charkieh*, 4 L. R. Ad. 59; 42 L. J. Ad. 17. In the matter of *The Charkieh*, 8 L. R. Q. B. 197; 42 L. J. Q. B. 75.

⁴ *The Sylph*, 2 L. R. Ad. 24; 39 L. J. Ad. 14; *Unborn Child*; *The George and Richard*, 3 L. R. Ad. 466; 24 L. T. N. S. 717.

⁵ *The Franconia*, 2 L. R. Ad. 163; 46 L. J. Ad. 53; *The Beta*, 2 L. R. Ad. 449; 38 L. J. Ad. 50; A. C. A. 1861, ss. 7 and 10; M. S. A. 1854, s. 14; 9 & 10 Vict. c. 93, s. 2. The decision in *The Franconia*, by the Court of Appeal, must be taken as overruling *Smith v. Brown*, 6 L. R. Q. B. 729; 40 L. J. Q. B. 214. As to foreigners: *The Explorer*, 3 L. R. Ad. 289; 40 L. J. Ad. 41.

⁶ A ship, under the M. S. Act, was defined by Lord Blackburn as every vessel that substantially goes to sea, or is not propelled by oars, unless it is also a seagoing craft: *Ex parte Ferguson*, 6 L. R. Q. B. 280; 40 L. J. Q. B. 105. For examples of rule in text, see *The Malvina*, Lush. 493; 31 L. J. Ad. 113 (barge); *The Sarah*, Lush. 549; *Purkis v. Flower*, 9 L. R. Q. B. 114; 43 L. J. Q. B. 33 (barge); *The Uhla*, 2 L. R. Ad. 29 n.; 37 L. J. Ad. 16 n. (a pier); *The Clara Killam*, 3 L. R. Ad. 161; 23 L. T. N. S. 27 (submarine

one vessel, damage is caused by a second to a third, the first is liable for the indirect injury;¹ and this rule applies if the injuries received by the complaining ship are the results of any kind of negligence not necessarily of collision.²

In order to render a ship liable for damage, it must have been entirely caused by the wrongful act of such ship; for if it is wholly the result of inevitable accident, or wholly a consequence of the negligence of the suffering party, the ship complained of is free from liability. If it results from a negligence of both ships, the loss occasioned by such damage must be equally divided between the two wrongdoers and sufferers.³ But if a reasonable doubt exists as to the cause of a collision, it will be considered as an accident.⁴ And where one ship is being towed by another, and a collision takes place with a third vessel, the one of the two ships will be liable on which is the governing as distinguished from the motive power.⁵ But, subject to these rules, the liability in each particular case depends wholly on the state of the particular facts.

A ship is held liable for damage if, in an action for damage by collision, it is proved that it has infringed any of the Regulations made under the Merchant Shipping Acts, 1854-1872, without absolute necessity.⁶ That is to say, the liability attaches, unless the ship which has so broken these rules can prove, not that infringement was not, but could not have been a cause of the collision; or, in other words, not only the absence of any infringe-

cable); *The Philadelphia Steamboat Co. v. The Philadelphia Ry. Co.*, 23 Howard, 207 (A.), (by piles in river).

¹ *The Thames; The Sisters*, 1 L. R. P. D. 117; 35 L. J. Ad. 39.

² *The Industrie*, 3 L. R. Ad. 303; 40 L. J. Ad. 26.

³ *The Woodrop Sims*, 2 Dods. 83.

⁴ *The Catherine of Dover*, 2 Hagg. 145.

⁵ *The Aracan*, 6 L. R. P. C. 127; 43 L. J. Ad. 30.

⁶ 36 & 37 Vict. c. 85, s. 17. The Regulations as to lights do not apply to dumb barges on the Thames: *The Owen Wallis*, 4 L. R. Ad. 175; 43 L. J. Ad. 36. For the Regulations, with some decisions thereon, see *post*, App. III.

ment must be shown, but the impossibility of the collision having been a consequence of the infringement.¹ But it is doubtful whether the statute which formulates the above rule can apply to foreign vessels on the high seas; the general tenor of international law is on the whole against such application.²

If a collision occurs through a breach of these or any other maritime regulations, which breach is the result of a previous collision between the defendant ship and another, and in which the former was not open to blame, she will not be considered liable for the subsequent breach.³ If the person in charge of one ship, after a collision, fails to render all practicable assistance in his power to the other ship, if she requires it, this will be *prima facie* evidence that the collision occurred through his wrongful act or negligence.⁴

¹ *The Hibernia*, 31 L. T. N. S. 804; 4 W. R. 60; *The Magnet*, 4 L. R. 417; 44 L. J. Ad. 1; *The Fanny M. Carvill*, 44 L. J. Ad. 34; 32 L. T. N. S. 646.

² *The Saxonia*, Lush. 410; 31 L. J. Ad. 201; Story, Conflict of Laws, p. 32. If the intention of the Legislature is clearly expressed that such statutes should apply to foreign ships, the Courts would have to undertake the jurisdiction thrust upon them. But it is clear that one country cannot by its municipal law bind those out of its own territory over whom it has no jurisdiction. In the case of *The Halley*, 2 L. R. P. C. 193, 37 L. J. Ad. 33, it was decided that Belgian laws, which did not permit compulsory pilotage to be a legal defence to an action against the owners of a ship, could not affect English ships. The same proposition, of which this last case forms an example, was affirmed by Cockburn, C.J., in *R. v. Keyn*, 2 L. R. Q. B. D. 90, 46 L. J. M. C. 17 (88); in *Cope v. Doherty*, 4 Kay & Johns. 367, 27 L. J. Ch. 600, in *The M. Moxham*, 46 L. J. Ad. 17, 2 L. R. Ad. D. 107; and in *The Zollverein*, 1 Swa. 96. In *The Annapolis*, Lush. 295, 30 L. J. Ad. 201, a distinction is introduced as regards laws which make pilotage compulsory, as they are connected with the right of entrance to places within the jurisdiction of the country which lays down such rules. This decision the case of *The Halley* seems to strengthen, for there rules as to compulsory pilotage were recognised, but not the Belgian law, by which responsibility for damage done when a pilot was on board was placed on the master of the ship. The case of *The Vernon*, 1 W. Rob. 316, appears to narrow the proposition to the extent that if the owner of a foreign ship is a plaintiff in a suit in this country against a British ship, he will be bound by these statutes as part of the *lex fori* which he has invoked.

³ *The Kjöbenhavn*, 30 L. T. N. S. 136.

⁴ *M. S. A. 1862*, s. 33; *The Queen*, 2 L. R. Ad. 35; 38 L. J. Ad. 39.

In addition to the neglect of statutory provisions which constitutes one form of negligence, it may arise from other circumstances, as improper sailing manœuvres;¹ the crossing of a river by a steamer in a dense fog;² absence of proper notice to passing vessels of an approaching launch;³ want of proper warning by a ship aground in a river;⁴ want of proper look out;⁵ too high a rate of speed;⁶ and anchoring in an inconvenient place.⁷

If the complaining ship or thing is proved to have suffered injury entirely in consequence of its own negligence, it must bear the whole of its own losses.⁸ Such negligence is giving a foul berth,⁹ want of conspicuous lights,¹⁰ or of strength in a pier.¹¹

When damage is caused by circumstances which the party charged could not have prevented by the exercise of ordinary care, caution, and maritime skill, the result of such events is inevitable accident;¹² or, in other words, if those in charge of a ship have taken all such precautions as men of ordinary prudence and skill exercising reasonable foresight would have used to avert damage in the position in which they were placed.¹³ The burden on the defendant of proving that damage is the result of an inevitable accident does not fall on him until a *prima facie* case of negligence is shown against him by the

¹ *The Marmion*, 27 L. T. N. S. 255.

² *The Lancashire*, 4 L. R. Ad. 98; 29 L. T. N. S. 927.

³ *The Blenheim*, 10 Jur. 79; *The Glengarry*, 43 L. J. Ad. 37; 30 L. T. N. S. 341; *The Andalusian*, 2 L. R. P. D. 231; 36 L. J. Ad. 77.

⁴ *The Industrie*, 3 L. R. Ad. 303; 40 L. J. Ad. 26.

⁵ *The Glannibanta*, 1 L. R. Ad. D. 283; 34 L. T. N. S. 934.

⁶ *The City of Brooklyn*, 1 L. R. Ad. D. 279; 34 L. T. N. S. 394.

⁷ *The Rona*, 29 L. T. N. S. 781.

⁸ For example, *The Bellerophon*, 44 L. J. Ad. 7; 33 L. T. N. S. 412.

⁹ *The Vivid*, 42 L. J. Ad. 57; 29 L. T. N. S. 375.

¹⁰ *The John Fenwick*, 3 L. R. Ad. 500; 41 L. J. Ad. 38.

¹¹ *The Albert Edward*, 44 L. J. Ad. 49; 24 W. R. 179.

¹² *The Virgil*, 2 W. Rob. 201; *The Aimor*, 29 L. T. N. S. 118; 21 W. R. 707; *The Marpesia*, 4 L. R. P. C. 212; 26 L. T. N. S. 333.

¹³ *The William Lindsay*, 5 L. R. P. C. 338; 29 L. T. N. S. 355; *The Calcutta*, 21 L. T. N. S. 768.

plaintiff.¹ It seems also to be the Admiralty rule that where one ship has suffered loss from a collision, which loss the defendants state has been caused by the want of proper courage and seamanship on the part of those in charge of the injured vessel, the burden of proving this fact lies on the defendants.²

When both
ships are
in fault.

If both ships are in fault, each bears half the entire loss without regard to the amount of negligence shown by the two vessels.³

Damage
through
fault of
pilot.

But the liability of the master or owner for damage is taken away when the loss or damage has been occasioned solely⁴ by the fault or incapacity of a licensed pilot actually at the time when such damage was done in charge of the injuring ship, within the bounds of a district where the employment of a pilot on ships, including such as the vessel complained of, is compelled by law.⁵ If the defendant proves that his ship was in charge (a) of a qualified pilot, (b) that he was bound to employ him by law, (c) negligence on the part of the pilot a cause of damage, his *prima facie* liability is removed, and the complaining party must prove other causes in order to render the defendant liable.⁶ But the default of the pilot must be in regard to the duties of his office.⁷

Damage to
cargo from
collision.

If under any of the circumstances already mentioned, excepting inevitable accident, damage is done to cargo, the owner can recover damages from the ship which has caused

¹ *The Marpesia*, *sup.*

² *The Thuringia*, 41 L. J. Ad. 44; 26 L. T. N. S. 446.

³ *The Milan*, Lush. 388; 31 L. J. Ad. 105; J. A. 1873, s. 25, sub-s. 9.

⁴ *The Queen*, 2 L. R. Ad. 354; 38 L. J. Ad. 39.

⁵ M. S. A. 1854, s. 388. This statute applies to foreign ships in British waters: *The Annapolis*, Lush. 295; 30 L. J. Ad. 201; and to British ships in foreign waters where pilotage is compulsory: *The Halley*, 2 L. R. P. C. 193; 37 L. J. Ad. 33; *The Peerless*, Lush. 103; 13 Moo. P. C. 444; *The Earl of Auckland*, Lush. 164; 30 L. J. Ad. 121.

⁶ *Clyde Navigation Co. v. Barclay*, 1 L. R. App. Cas. 790.

⁷ *The Iona*, 1 L. R. P. C. 426; 16 L. T. N. S. 159; *The City of Cambridge*, 5 L. R. P. C. 451; 30 L. T. N. S. 439.

the injury; but in the case of negligence on the part of both ships, one moiety only of the damage from the ship which collided into that wherein the cargo was laden.¹

It will be convenient to discuss together actions based on the Admiralty Court Act, 1861,² for damage done to cargo by the ship, whether British or foreign,³ on which it is laden, and for breach of duty or of contract on the part of the owner, master, or crew of a ship⁴ carrying a cargo which is injured by the consequences of such breach. Such actions may be *in personam* or *in rem*.⁵

Damage to cargo and breach of duty or contract.

(A.) As to the parties to such actions. The owner or any consignee or assignee named in the bill of lading, even though the property in the goods has not passed by means of an indorsement on the bill of lading, may sue.⁶

(B.) As to the circumstances under which an action will lie. The goods must be carried to some port of England or Wales, but they need not necessarily reach such a port as long as the ship on which they were originally laden does so.⁷ Nor, again, need they be actually imported so long as they are despatched to an English or Welsh port, or if despatched to a foreign place, yet arrive at a port in England or Wales.⁸ The owner of the ship at the time when

¹ *The Milan*, Lush. 388; 31 L. J. Ad. 105.

² "The Court of Admiralty shall have jurisdiction over any claim by the owner or consignee or assignee of any bill of lading of any goods carried into any port of England or Wales, in any ship, for damage done to the goods, or any part thereof, by the negligence or misconduct of, or for any breach of duty or breach of contract on the part of the owner, master, or crew of the ship," s. 6.

³ *The Ironsides*, Lush. 458; 31 L. J. Ad. 129.

⁴ A. C. A. 1861, s. 6.

⁵ *The Pieve Superiore*, 5 L. R. P. C. 482; 43 L. J. Ad. 20.

⁶ 18 & 19 Vict. c. 111; *The St. Cloud*, Br. & L. 4; 8 L. T. N. S. 54; *The Norway*, Br. & L. 377; 12 L. T. N. S. 57; *The Nepoter*, 2 L. R. Ad. 375; 38 L. J. Ad. 63.

⁷ *The Dantzic*, Br. & L. 102; 32 L. J. Ad. 164. But if they were first laden on ship A., and transhipped to ship B. in which they arrive, ship A. is not liable for damage done on the voyage: *The Ironsides*, Lush. 458; 31 L. J. Ad. 129.

⁸ *The Bahia*, Br. & L. 61; 12 L. T. N. S. 145; *The Pieve Superiore*, 5 L. R. P. C. 482; 43 L. J. Ad. 20.

the damage complained of was done must not be domiciled in England or Wales.¹

The goods and the duty or the contract must be such as are mentioned in or arise out of the bill of lading,² after the cargo has been placed on board.³ And to absolve the owners of a ship from liability in consequence of a change of ownership *quoad* the cargo by a charter, notice of such change must be brought to the knowledge of the shippers, otherwise the master will still be regarded as the agent of the owners,⁴ though when the action is *in rem* a lien attaches from the moment of arrest, so that in this form of proceeding this rule is of little consequence. If the charter-party is alluded to in the bill of lading, the two instruments must be read together⁵ so far as the former affects the contract which the latter contains.⁶

Circum-
stances
which con-
stitute a
breach of
duty or
contract.

What is negligence or misconduct, and what is a breach of duty or of contract, sufficient to sustain an action by the owner, consignee, or assignee of the cargo against the ship on which it has been laden, depends on the special circumstances of each case, and the general law applicable thereto, subject to the rules already given. The following are some of the circumstances on which such an action can be based : Refusal to deliver cargo on payment of *pro rata* freight;⁷ refusal to deliver goods to a vendor with a right of stoppage *in transitu*;⁸ unnecessary delay in time of

¹ *The Ella A. Clark*, Br. & L. 32 ; 8 L. T. N. S. 119, decided on 3 & 4 Vict. c. 65, s. 6 ; *The Pacific*, Br. & L. 244 ; 10 L. T. N. S. 541.

² *The Norway*, Br. & L. 226 ; 10 L. T. N. S. 40 ; *The Princess Royal*, 3 L. R. Ad. 41 ; 39 L. J. Ad. 43 ; *The Pieve Superiore*, 5 L. R. P. C. 482 ; 43 L. J. Ad. 20.

³ *The Dannebrog*, 4 L. R. Ad. 386 ; 44 L. J. Ad. 2.

⁴ *The Great Eastern*, 2 L. R. Ad. 88 ; 36 L. J. Ad. 15 ; *The Patria*, 3 L. R. Ad. 436 ; 41 L. J. Ad. 43 ; *Sandeman v. Scurr*, 2 L. R. Q. B. 86 ; 36 L. J. Q. B. 58.

⁵ *The San Roman*, 3 L. R. Ad. 583 ; 42 L. J. Ad. 46 ; 5 L. R. P. C. 301.

⁶ *The Norway*, *supra*.

⁷ *The Patria*, 3 L. R. Ad. 436 ; 41 L. J. Ad. 43.

⁸ *The Tigress*, Br. & L. 38 ; 32 L. J. Ad. 97.

war when avoiding hostile cruisers;¹ withholding, by the master from the owner of the cargo, particulars of amount of freight and general average contribution due from him;² barratrous act of master;³ wrongful detention of goods under M. S. A. 1862, ss. 67 and 68.⁴ The contract entered into between the owner of the cargo and the ship must be construed according to its meaning as far as it is obvious. The law by which the contract is governed, *i.e.*, that which the parties thereto contemplated when they entered into it, would be applied to its construction; subject to this rule such law is generally the law of the flag under which the ship sails.⁵

As to damage under head IV., the plaintiff must prove damage, by showing, (a) the sound condition of the goods when put on board; (b) that they are delivered in a damaged condition,⁶ the defendants must then prove that they are not responsible for such damage.

In all cases of damage to goods the party doing the injury must bear the whole loss, so that if in the case of a collision the complaining ship on which cargo was laden was itself entirely to blame, it would have to recompense the owner of the cargo if injured, and if both ships are found to blame, one moiety of the damage to the cargo is recoverable against one ship, the other moiety, as has been already stated, against the other ship.⁷

¹ *The San Roman*, 3 L. R. Ad. 583; 42 L. J. Ad. 46; 5 L. R. P. C. 301. Definition of sufficient cause to justify delay, "apprehension of capture founded on circumstances calculated to affect the mind of a master of ordinary courage, judgment, and experience": *The San Roman*.

² *The Norway*, Br. & L. 226; 10 L. T. N. S. 40.

³ *The Chasca*, 4 L. R. 446; 44 L. J. Ad. 17.

⁴ *The Energie*, 6 L. R. P. C. 307; 44 L. J. Ad. 25.

⁵ *The Patria*, 3 L. P. Ad. 436; 41 L. J. Ad. 43; *The Express*, 3 L. R. Ad. 597; 41 L. J. Ad. 79; *Lloyd v. Guibert*, 1 L. R. Q. B. 115; 33 L. J. Q. B. 241; *The Wilhelm Schmidt*, 25 L. T. N. S. 34; *Pope v. Nickerston*, 3 Story, 465 (A.).

⁶ *The Prospero Palazzo*, 29 L. T. N. S. 622; *The Peter de Grossa*, 1 L. R. Ad. D. 414.

⁷ *The Milan*, Lush. 388; 31 L. J. Ad. 105. The owners of the cargo must be parties to the suit in order to recover: *The Saracen*, 6 Moore, P. C. 56; 4 N. of C. 509.

Limitation
of liability.

Lastly, as to the amount of damages to be awarded. Where loss of life, or damage under the first three heads of this subject is caused without the actual fault or privity¹ of the owners, whether registered or equitable,² of a ship whether British or foreign, their³ liability is limited, (a) in respect of loss of life or personal injury alone or together with loss or damage to other things to an aggregate amount not exceeding 15*l.* for each ton of the ship's tonnage; (b) in respect of loss or damage to ship's goods, merchandise, or other things, either alone or together with loss of life or personal injury, to an aggregate amount not exceeding 8*l.* for each ton of the ship's tonnage.⁴ A claim of such limitation does not *ipso facto* admit liability.⁵ On each distinct occasion when damage is done the rule applies, but such occasions must be clearly separate in point of time in order to prevent them being regarded as a single occasion.⁶

The assess-
ment of
damages.

The principle which regulates the assessment of damages to a ship is that the plaintiff shall be placed in the same position as if the ship had not been lost or damaged;⁷ subject to the provisions as to limited liability which have already been mentioned. If the ship is totally lost, the owner should receive her value and that of the freight which she would certainly have earned but for her destruction.⁸ If the vessel is partially injured, the damages recoverable consist of the cost of necessary repairs,⁹ and a sum by way of consequential damages less the sums which

¹ Privity, *i.e.* intervention. See *The Obey*, 1 L. R. Ad. 102; 12 Jurist, N. S. 817.

² *The Spirit of the Ocean*, Br. & L. 336; 34 L. J. Ad. 74.

³ If caused by fault of one of several co-owners, the rule applies to the others: *The Spirit of the Ocean*, *sup.*

⁴ M. S. A. 1862, s. 54. Carriers partly by land and partly by sea, who issue tickets for land and sea journeys, can obtain the benefit of this statute: *London and S. W. Ry. Co. v. James*, 8 L. R. Ch. 241; 42 L. J. Ch. 337.

⁵ *The Amalia*, Br. & L. 151 (155); 8 L. T. N. S. 805.

⁶ *The Rajah*, 3 L. R. Ad. 539; 41 L. J. Ad. 97. As to method of pleading, see *post*, Part II. O. xix. r. 3.

⁷ *The Clyde*, Swa. 23.

⁸ *The South Sea*, Swa. 141.

⁹ *The Clyde*, *sup.*; *The Pactolus*, Swa. 173; 28 L. T. N. S. 220.

would have been spent in earning that which is lost,¹ in respect of losses proximately or necessarily caused by the injury which is the ground of the action,² but exclusive of those which, though they result from the damage, are not necessary consequences of it.³ Where the limited liability exceptions do not apply, interest where the vessel is lost without cargo runs from date of loss to date of payment; where she is lost with cargo, on the value of ship and freight from the date of the probable end of the voyage.⁴ Where the limited liability provisions are applicable, interest runs in all cases from the date of the loss.⁵

Generally, when a ship is totally lost, her market value at the time of her loss is a fair criterion of her value, but it may also be estimated from various other facts, as her original value, or the opinion of competent witnesses on board as to her condition, or of persons conversant with shipping who can form an independent judgment.⁶

When goods are lost or injured, the damages to be awarded are usually the value of the lost goods, or the amount by which their value has been reduced. That value is, generally speaking, the market value of the goods at the time and place where they should have been delivered, or in case of partial damage only, at the port of discharge. If from any cause there is no market for the goods, their real value, so far as is possible, must be ascertained as a fact, by considering the circumstances which

Damages
in injuries
to goods.

¹ *The Black Prince*, Lush. 468; 5 L. T. N. S. 39 (by way of demurrage); *The Legatus*, Swa. 168. Salvage to damaged ship, but not if rendered necessary by the misconduct or negligence of her crew: *The Linda Swa.* 206; *The Betsy Cairnes*, 2 Hagg. 28. Sums agreed to be paid as salvage: *The Star of India*, 1 L. R. Ad. D. 446; 45 L. J. Ad. 102; *The Gazelle*, 21 W. Rob. 279.

² *The Thuringia*, 41 L. J. Ad. 44; 26 L. T. N. S. 446.

³ E.g., if greater courage would have prevented them: *The Thuringia*; *The Flying Fish*, 3 Moo. P. C. N. S. 87; 34 L. J. Ad. 113; *The Empress Eugenie*, Lush. 138.

⁴ *The Canada*, Lush. 586.

⁵ *The Northumbria*, 3 L. R. Ad. 6; 39 L. J. Ad. 3; *The City of Buenos Ayres*, 25 L. T. N. S. 672.

⁶ *The Clyde*, Swa. 23; *The Ironmaster*, Swa. 443; *The African Steamship Co. v. Swanzy*, 2 Kay & J. 660.

would have influenced the market if one had existed, that is to say, the price of similar goods at the place of manufacture or production, less the cost of carriage, and in addition to reasonable sum for importer's profit.¹

In breach
of contract
or duty.

In case of a breach of contract or of duty the measure of damages is the amount of any loss, so far as it is a natural and necessary consequence of such breach, which is at once actual and reasonably possible, or such as is the natural consequence of a non-fulfilment of an object within the contemplation of the parties to the bill of lading.² In most cases the damages are referred to the Registrar and Merchants for assessment.

Maritime
lien.

A maritime lien for damage arises as soon as the injury is done; it attaches henceforth to the ship,³ and to its appurtenances,⁴ and to the whole of the freight.⁵ But the cargo may be arrested for freight due in respect of its carriage, which was in process of being earned, though it was not on board at the time when the damage was done.⁶

But no maritime lien exists against a ship in cases arising out of the negligence, misconduct, or breach of duty of the owner, master, or crew of a ship, so that valid charges have a priority over such claims, and the vessel is only a security from the time of its arrest.⁷

Limitation
to actions

In any cause of action already mentioned, no proceedings

¹ See Mayne on Damages, 2nd ed. 220; *Rice v. Baxendale*, 7 H. & N. 96; 30 L. J. Ex. 371; *O'Hanlan v. Great Western Ry. Co.*, 6 B. & S. 484; 34 L. J. Q. B. 154; *The St. Cloud*, Br. & L. 4 (18); *Brandt v. Bewley*, 2 B. & Ad. 932 (939).

² *The Perana*, 2 L. R. Ad. 118, 36 L. T. N. S. 388; *Simpson v. London and N. W. Ry. Co.*, 1 L. R. Q. B. D. 274; 45 L. J. Q. B. D. 182; Sedgwick on Damages, 6th ed., p. 431.

³ *The Bold Buccleugh*, 7 Moo. P. C. 267 (281); *The Lympington*, 32 L. T. N. S. 69; 23 W. R. 421. The claim is good against the full value of the ship, if repaired subsequently to the date of damage: *The Alice*, 1 W. Rob. 111 (120).

⁴ *The Alexander*, 1 Dods. 278 (282); *The Dundee*, 1 Hagg. 104.

⁵ *The Rowcliff*, 2 L. R. Ad. 363; 38 L. J. Ad. 56.

⁶ *The Leo*, Lush. 444, 31 L. J. Ad. 78; *The Orpheus*, 3 L. R. Ad. 308; 40 L. J. Ad. 24. And see *ante* as to lien generally, p. 22.

⁷ *The Pieve Superiore*, 5 L. R. P. C. 412; 43 L. J. Ad. 20.

should be taken in the Admiralty Division unless the amount claimed exceeds 300*l.*;¹ if the plaintiff obtains less than this sum, he may be condemned in costs, and shall not recover costs unless the judge certifies that the action was rightly brought in the Superior Court.²

¹ 31 & 32 Vict. c. 71, s. 3 (3 and 4); 32 & 33 Vict. c. 51, ss. 2 and 4.

² 31 & 32 Vict. c. 71, s. 9. If the amount claimed is above 300*l.*, and afterwards is brought below that sum by the limitation of defendant's liability, the plaintiff is still entitled to costs: *The Young James*, 59 L. J. Ad. 1; 3 L. R. Ad. 1; and see *ante*, limitation in action for salvage, p. 10.

CHAPTER II.

SECTION I.

Wages.

WHEN wages are due to a seaman three courses are open to him in order to obtain payment of them. He may sue the owner or the master (if he be not a master himself) at law, or he may bring an action *in rem* or *in personam* in the Admiralty Division; but where his remedy has been obtained before one tribunal or by one proceeding, all right of action elsewhere in another form is at an end.¹ The subject divides itself into: I. Who can sue for wages. II. What fall within the term wages. III. What are valid defences to actions for wages, and what deductions may be made from such claims.

Who can
sue for
wages.

I. The jurisdiction of the Admiralty Division rests now chiefly on the Admiralty Court Act of 1861, which finally gave to this Court a long-disputed power. The Court has jurisdiction "over any claim by a seaman of any ship for wages earned by him on board the ship, whether the same be due under a special contract or otherwise."²

No seaman can by agreement forfeit this legal right to his wages and the consequences thereof.³

¹ *The Orient*, 3 L. R. P. C. 690; 40 L. J. Ad. 29; *The Bengal*, Swa. 468.

² A. C. A. 1861, s. 10. Ship, *i.e.*, any vessel not propelled by oars: A. C. A. 1861, s. 2.

³ M. S. A. 1854, s. 182, and by general maritime law: *The Julina*, 2 Dods. 504.

Any person engaged in work on board a ship can take advantage of this section.¹

The jurisdiction of the Court extends to foreign seamen on board foreign ships, but when foreign ships are sued certain formalities are required preliminary to the action. Notice of the action against a foreign ship must be sent to the consul of the country to which the ship belongs. Should this official enter a protest against the cause being entertained by the Court, and state reasons for it, the claimant must dispute these facts, and give answers to his objections, when it will become the duty of the judge to decide, in his discretion, whether the action shall be allowed to proceed.²

Alien enemies, though as a general rule they are not entitled to the use of our Courts, may sue in the Admiralty Division for wages if the ship on which they have been earned has come to this country under a British licence, so as to take away for a time the disqualifications of those on board.³

Although the master of a ship, as agent of the owners, is liable to be sued at common law by the seaman, he occupies a dual capacity, for by the statute of 1861⁴ he is enabled to sue the ship on which he has served for his wages, and has in all respects the same rights as an ordinary seaman. And the rule which applies to foreign seamen is equally applicable to foreign masters and to those who sue foreign ships.⁵

¹ The following are some of the decisions on the capacities of persons suing for wages: *The Wharton*, 3 Hagg. 148, n., surgeon; *The Prince George*, ib. 376, purser; *Ross v. Walker*, 2 Wils. 264, pilot; *Alison v. March*, 2 Ventris, 181, boatswain; *The Jane and Matilda*, 1 Hagg. 187, female cook and steward; *The Balmer*, ib. 163, carpenter; *The Albert Crosby*, Lush. 44, apprentice; and see *Hook v. Moreton*, 1 Lord Ray. 397.

² *The Milford*, Swa. 362; *The Octavia*, Br. & L. 215; 6 L. T. N. S. 695; *The Nina*, 2 L. R. P. C. 38; 37 L. T. Ad. 17.

³ *The Maria Theresa*, 1 Dods. 303; *The Vrouw Mina*, 1 Dods. 234.

⁴ A. C. A. 1861, s. 10. See also M. S. A. 1854, s. 191.

⁵ *The Milford*, Swa. 262.

Wages
must be
earned in
connection
with a
ship.

II. To fall within the term wages, for the purpose of an action in the Admiralty Division, the sums sued for must have been earned on board the ship, not necessarily at sea, but in work on the vessel itself, or in duties connected with the ship.¹ Sums in the nature of wages, but strictly the profits of a voyage, may be recovered as ordinary wages.² They consist also of sums earned from the time at which work is commenced on the ship, or from the time specified in the agreement for the commencement of the work, or from the time when the claimant arrived on board, whichever first happens.³

End of
service by
wreck, &c.

Under cases within the Merchant Shipping Acts, when the voyage is terminated by wreck or loss at sea, or when the services of the mariner are concluded by his being put on shore under a certificate of inability to proceed on the voyage, wages are only due up to the time of either of these events.⁴

If the voyage is ended in consequence of the ship being seized for illegal trading, wages are due for the voyage if the seamen are not parties thereto.⁵

Date to
which
wages be-
come due.

Wages are generally due until the period agreed for in the contract of service is ended, or as long as labour is given to the ship.⁶ But it depends on the terms of the contract whether they accrue at the end of the voyage or at previous dates.⁷ Temporary interruptions⁸ will not take away a right to wages, nor will illness or injury received in the course of duty, even though the seaman may in consequence be left at an intermediate port.⁹

Wrongful
dismissal.

If the seaman is wrongfully dismissed before the end of

¹ A. C. A. 1861, s. 10; *The Chieftain*; Br. & L. 104; 32 L. J. Ad. 106.

² *The Frederick*, 5 C. Rob. 8.

³ M. S. A. 1854, s. 181.

⁴ M. S. A. 1854, 185; *The Rajah of Cochin*, Swa. 473.

⁵ *The Malta*, 2 Hagg. 158.

⁶ *The Elizabeth*, 2 Dods. 403.

⁷ *Button v. Thompson*, 4 L. R. P. C. 330; 38 L. J. C. P. 225.

⁸ *Delamarier v. Winteringham*, 4 Camp. 186; *Bergstrom v. Mills*, 3 Esp. 36.

⁹ *Chandler v. Grieves*, 2 H. Bl. 606, n.; *Parsons on Shipping*, II. 53.

the voyage or of his term of employment, his wages are due for the whole of the voyage.¹ And the expenses necessarily incurred by the seaman, as a proximate consequence of such loss of service, as the expenses of a foreigner on his return to his own country, fall into the category of wages, as well as a sum in the nature of compensation for wrongful dismissal,² such as will put him in as good a condition as if the contract had been performed.³ As a general rule, the cost of the seaman's maintenance after the commencement of the suit is recovered as costs in the cause.⁴

By the Merchant Shipping Act, if a seaman is discharged before the voyage has commenced or one month's wages are earned, without his consent or fault, compensation may be recovered, but limited to one month's pay at the most.⁵ By the general maritime law, if the voyage is broken up or the seamen are dismissed without cause before the voyage begins, they have their wages for the time they serve, and a reasonable compensation for special damage.⁶

If the service is ended through the seaman volunteering into the Royal Navy, his wages up to that time are due, and may be sued for by the accountant-general or the seaman himself.⁷

Sums which may also be recovered as wages are : the expenses of subsistence and voyage home when a British ship is sold or transferred abroad, and the master does not comply with the provisions of the Merchant Shipping Act ;⁸ the expenses of a seaman left behind or discharged from a British ship, or an Englishman from a foreign ship, out of

¹ *The Elisabeth*, 2 Dods. 403 ; *The Exeter*, 2 C. Rob. 261 ; *The Beaver*, 3 C. Rob. 92.

² *The Madonna D'Idra*, 1 Dods. 37 ; *The Frederick*, 2 Hagg. 211 (218) ; *The Constancia*, 15 W. R. 183 ; *The Great Eastern*, 1 L. R. Ad. 384 ; 36 L. J. Ad. 15.

³ *The Camilla*, Swa. 312 ; *The Elisabeth*, 2 Dods. 403.

⁴ *The Carolina*, 34 L. T. N. S. 399.

⁵ M. S. A. 1854, s. 167.

⁶ *Parsons on Shipping*, II. 50.

⁷ M. S. A. 1854, s. 215.

⁸ M. S. A. 1854, s. 205.

the United Kingdom;¹ allowance for short or bad provisions;² the moneys and effects of a deceased seaman who has been employed on a British ship;³ expenses caused by illness from want of proper food and accommodation and medicines;⁴ and double pay for every day, not exceeding ten, during which payment of wages is delayed without proper cause.⁵

Disburse-
ments by
master.

The disbursements of the master made on account of the ship are placed on the same footing as wages.⁶ The term disbursements must be explained by reference to what are necessities⁷ for a ship, but it may be defined as including all sums properly expended by the master on or for the benefit of the ship which he has actually paid or for which he is personally liable.⁸

Maritime
lien.

Both seaman⁹ and master¹⁰ have a maritime lien on the ship and freight¹¹ for wages and disbursements; but as between them the former has the preference should their claims ultimately come into conflict.¹² This lien is not affected by the fact that the master is also part owner of the vessel.¹³

Defences
to actions
for wages.

III. The legal defences to claims for wages as a whole, and

¹ M. S. A. 1854, s. 213.

² *Ib.* s. 223.

³ *Ib.* s. 196.

⁴ M. S. A. 1867, s. 7.

⁵ M. S. A. 1854, s. 187. For the full facts of the above cases the statutes should be referred to. In some cases the Board of Trade brings the action. And as to compensation for not suing abroad, see M. S. A. 1854, s. 190.

⁶ A. C. A. 1861, s. 10; *The Victoria*, 37 L. J. Ad. 12.

⁷ *Post*, p. 45.

⁸ *The Feronia*, 2 L. R. Ad. 65; 37 L. J. Ad. 60; *The Red Rose*, 2 L. R. Ad. 80; *Bristow v. Whitmore*, 9 Hop. L. C. 391; *The Marco Polo*, 24 L. T. N. S. 804; *The Jane Seddon*, 1 L. R. Ad. 62; 35 L. J. Ad. 117 (costs of defence against a false criminal charge arising in the course of the master's duty).

⁹ *The Neptune*, 1 Hagg. 238; *The Sydney Cove*, 2 Doda. 13; *The Golubchick*, 1 W. Rob. 148.

¹⁰ *The Arab*, 5 Jur. N. S. 417; *The Mary Anne*, 1 L. R. Ad. 8; 35 L. J. Ad. 6.

¹¹ *The Mary Ann*, 9 Jur. 194; *The Riby Grove*, 2 W. Rob. 52.

¹² *The Salacia*, Lush. 543; 32 L. J. Ad. 41. See *ante*, as to lien, salvage, p. 22.

¹³ *The Feronia*, 2 L. R. Ad. 65; 37 L. J. Ad. 6.

the matters which if not defences may cause deduction of a part of the claims, are numerous. They arise either from the general principles of maritime law or as regards those over whom English municipal law has authority from statutory enactments. The following are some of the leading defences and matters for deduction :

Desertion, that is to say, leaving a ship without an intention of returning, or without the consent and leave of the master, or without a reasonable and urgent cause.¹

Neglect of seamen to join ship without reasonable cause, or to proceed to sea, or absence without leave ;² quitting ship in port of delivery and before she is placed in security ;³ wilful or continued wilful disobedience ;⁴ wilful damage to ship, stores, or cargo, or embezzlement of the same ;⁵ acts of smuggling, for which the offender is convicted ;⁶ wilful refusal to work, neglect to work ;⁷ having been imprisoned on the voyage ;⁸ false statement as to name of last or last alleged ship,⁹ fines for acts of misconduct.⁸ All these last acts cause a deduction only from wages which may be due.¹⁰

Want of exertion to the utmost in case of wreck or loss of ship ;¹¹ illness caused by the wilful neglect or default of the seaman himself,¹² are defences ; also tender of wages in cash and acceptance in preference of bill,¹³ outstanding

¹ M. S. A. 1854, s. 243 (1) ; *The Frederick*, 1 Hagg. 211 ; *The Castalia*, ib. 59 ; *The Minerva*, ib. 347 ; *The Agincourt*, 279 ; *The Amphitrite*, 2 Hagg. 403 ; *The Ealing Grove*, ib. 16 ; *The Pearl*, 5 C. Rob. 224 ; *The Westmoreland*, 1 W. Rob. 216 ; *The Two Sisters*, 2 W. Rob. 125 ; *The Roebuck*, 37 L. T. N. S. 274.

² M. S. A. 1854, s. 243 (2).

³ *Ib.* s. 243 (3).

⁴ *Ib.* s. 243 (4) & (5). And as to refusal to return by maritime law : *The Bulmer*, 1 Hagg. 163.

⁵ M. S. A. s. 243 (8).

⁶ *Ib.* s. 243 (9).

⁷ *Ib.* s. 186.

⁸ *Ib.* s. 251.

⁹ *Ib.* s. 256.

¹⁰ *Ib.* s. 254.

¹¹ *Ib.* s. 183.

¹² 31 & 32 Vict. c. 124, s. 8.

¹³ *The William Money*, 2 Hagg. 136.

accounts in a claim by master and balance in favour of owners;¹ an engagement under an illegal contract;² *mala fides* in the management of the ship; gross misconduct as distinguished from mere want of judgment or intelligence;³ particular neglect, the proximate cause of injurious consequences to a ship or the owners;⁴ constant drunkenness, and occasional drunkenness if accompanied by neglect of duty.⁵

The last six offences are most applicable to the case of officers of a ship.

If a seaman on a foreign ship is a plaintiff, it is a good defence that under the terms of his contract of service he is debarred from recovering his wages by the law of the country where the contract was made, or of the flag under which he sails.⁶

Restrictions on actions in High Court.

If an action for wages is brought in the High Court for a claim not exceeding 150*l.* the plaintiff may be condemned in costs, and will not be entitled to costs if he recovers less than this sum, unless the judge certifies that it was not a proper cause to bring in an inferior court.⁷

SECTION II.

Necessaries.

The jurisdiction of the Court.

Although from time to time the Court of Admiralty claimed to have jurisdiction in cases of claims for neces-

¹ *The City of Mobile*, 4 L. R. Ad. 131; 43 L. J. Ad. 41.

² *The Vanguard*, 6 C. Rob. 207; *The Malta*, 2 Hagg. 158. Blockade running is not an offence against municipal law: *The Helen*, 1 L. R. Ad. 1; *The Santissima Trinidad*, 7 Wheaton, 340 (A).

³ *The New Phoenix*, 1 Hagg. 98; *The Gondolier*, 3 Hagg. 191; *The Blake*, 1 W. Rob. 73; *The Camilla*, Swa. 312; 7 L. T. N. S. 647; *The Atlantic*, Lush. 566; *The Joseph Dexter*, 20 L. T. N. S. 820; *The Roebuck*, 31 L. T. N. S. 274; *The Dunmore*, 32 L. T. N. S. 340.

⁴ *The Duchess of Kent*, 1 W. Rob. 283.

⁵ *The Exeter*, 2 C. Rob. 261 (269); *The Thomas Worthington*, 3 W. Rob. 128; *The Roebuck*, 31 L. T. N. S. 274.

⁶ *The Johann Friedrich*, 1 W. Rob. 35; *The Nina*, 2 L. R. P. C. 38; 37 L. J. Ad. 17.

⁷ 31 & 32 Vict. c. 71, ss. 3 and 7.

saries, it was decided once for all in 1835¹ that it possessed no such power. Its jurisdiction, therefore, now rests solely upon the provisions of two statutes. These are as follows: "The High Court of Admiralty shall have jurisdiction to decide all claims and demands whatsoever . . . for necessities supplied to any foreign ship or sea-going vessel, and to enforce payment thereof whether such ship or vessel may have been within the body of a county or upon the high seas when the necessities were furnished in respect of which such claim was made."² "The High Court of Admiralty shall have jurisdiction over any claim for building, equipping, or repairing of any ship, if at the time of the institution of the cause the ship or the proceeds thereof are under the arrest of the Court. . .

. . . and over any claim for necessities supplied to any ship elsewhere than in the port to which the ship belongs, unless it is shown to the satisfaction of the Court that at the time of the institution of the cause any owner or part owner of the ship is domiciled in England or Wales."³

I. What are necessities.

What are
neces-
saries.

The principle upon which this definitive term is based is very broad. All things fit and proper for the service in which a vessel is engaged, whatever the owner of that vessel would order if present at the time, fall within the term. There is no distinction between necessities for the ship and necessities for the voyage, and all things reasonably requisite for the particular adventure on which the ship is bound are comprised in this category.⁴ Again, they must be such as are reasonably fit and proper for the ship under the circumstances, not merely such as are absolutely indispensable for the safety of the ship or the accomplishment of the voyage.⁵

¹ *The Neptune*, 3 Knapp. P. C. 94.

² 3 & 4 Vict. c. 65, s. 6.

³ A. C. A. 1861, ss. 4 and 5.

⁴ *Webster v. Seekamp*, 4 B. & Ald. 352; *The Riga*, 3 L. R. Ad. 516; 41 L. J. Ad. 39.

⁵ *The Fortitude*, 3 Sumner, 237 (A.), per Story, J.; *The Luhi*, 10

And if the claim is one for building, equipping, or repairing a ship, that is for work done on the ship and not for things supplied for it, she must when the cause was instituted have been under the arrest of the Court in order to give it jurisdiction.¹

Prelimi-
naries to
liability.

II. To render a ship liable in an action she must further be either a foreign ship, the owner of which may or may not be temporarily in the same port;² or a British ship, the owner of which is not domiciled in this country,³ which fact to be a good defence must be proved before judgment.⁴ The necessities must not have been supplied in a foreign port.⁵ In the case of a British ship they must not have been furnished in the port to which she belongs.⁶

The claims for the necessities, which may be supplied on the personal credit⁷ of the master, must be such as the

Wall. 192 (A.). The following are the chief judicial decisions upon particular things comprised in the term. Moneys obtained by bill of exchange to procure necessities, *The Onni*, 1 Lush. 154; *The Anna*, 45 L. J. Ad. 98; 34 L. T. N. S. 895; 46 L. J. Ad. 15. Anchors, cables, rigging, and things *ejusdem generis*, *The Sophie*, 1 W. Rob. 368. Money advanced to pay shipwright's bill, *The Albert Crosby*, 3 L. R. Ad. 37. Money paid by captain for repairs, *The Limerick*, 45 L. J. Ad. 97; 34 L. T. N. S. 711 (App.); 1 L. R. Ad. 92. Coals for steamer, *The West Friesland*, Swa. 454. Coppering, *The Turtiani*, 32 L. T. N. S. 841. Advance of freight (not), *ib.* Provisions, *The N. R. Gosfabrick*, Swa. 334. Clothing, *The W. F. Safford*, Lush. 69. Expenses of agent's journey to assist master in collision suit (not), *The Bonne Amelie*, 1 L. R. Ad. 19; 35 L. J. Ad. 115. Screw propeller for passenger steamer, *The Hecla*, 1 Spk. 441. Money for payment of averages (not), *The Aaltje Willemina*, 1 L. R. Ad. 107. Insurance for freight, *The Riga*, 3 L. R. Ad. 516; 41 L. J. Ad. 39.

¹ A. C. A. 1861, s. 4. But it will be observed from the case of *The Albert Crosby*, *ante*, that by paying the claim of the material man, the money so expended becomes in fact a necessary.

² *The Ocean Queen*, 1 W. Rob. 459; *The Kalorama*, 10 Wallace, 204 (A.).

³ *The Pacific*, Br. & L. 243 As to foreign ship: *The India*, 32 L. J. Ad. 185.

⁴ *Ex parte Michael*, 7 L. R. Q. B. 658; 41 L. J. Q. B. 349.

⁵ *The India*, *sup.* A colonial is not a foreign ship: *The Wataga*, Swa. 165; *The Anna*, 45 L. J. Ad. 98; 1 L. R. Ad. 253.

⁶ A. C. A. 1861, s. 5.

⁷ *The Onni*, Lush. 154; 3 L. T. N. S. 447; *The Anna*, 1 L. R. Ad. 253; 45 L. J. Ad. 98.

owners would be liable for at common law.¹ So that he must possess either an express or implied authority to bind the owners of the ship of which he is in charge. This may be inferred from the circumstances in which he is placed, and from the incidents annexed to his office by maritime law.² Or again, he must have been held out to the world by word or deed as the agent of the owners.³

The fact that the claimant is the agent of a foreign ship in a British port does not prevent him from bringing an action against such ship, either for necessities or for money paid by him to those who have supplied necessities.⁴ But if the amount sought to be recovered is a mere balance of a general account between principal and agent, the claim as one for necessities is inadmissible.⁵ A co-owner is in the same position as a stranger, if he is not interested in the results of the particular voyage when the necessities were supplied.⁶

Persons who have supplied a foreign ship with necessities have a maritime lien upon her from the moment that the work is done or the articles are supplied,⁷ but in respect to a British ship, under the Act of 1861, there is no such lien.⁸

Shipwrights have at common law a purely possessory lien upon a ship or article on which their labour has been expended, which from its nature can only be enforced by retaining possession of the thing on which the work

¹ *The Alexander*, 1 W. Rob. 360; *The Sophie*, *ib.* 369.

² *Cargo ex Hamburg*, 2 Moo. P. C. 289 (321); 33 L. J. Ad. 116; *Gunn v. Roberts*, 9 L. R. C. P. 331; 43 L. J. C. P. 233; *The Grape-shot*, 9 Wallace, 129 (A.).

³ *The Great Eastern*, 2 L. R. Ad. 88; 36 L. J. Ad. 15.

⁴ *The Underwriter*, 25 L. T. N. S. 279.

⁵ *Ib.*

⁶ *Ib.*

⁷ *The Ella A. Clerk*, Br. & L. 32; L. J. Ad. 11; *The Two Ellens*, 41 L. J. Ad. 33; 4 L. R. P. C. 160.

⁸ *The Ella A. Clerk*, *ib.*; *The Pacific*, Br. & L. 243; *The Troubadour*, 1 L. R. Ad. 302. As to the effect of want of caution in supplying necessities, see *The Panther*, 25 L. T. N. S. 389; *The Lottawanna*, 21 Wallace, 558 (A.).

has been done.¹ Yet the Court will compel a person in possession to deliver up the ship or article; but whilst so doing it will protect his interest.² But a mortgagee takes a ship subject to claims for building, repairs, or equipping.³

A limitation is placed on actions for necessities in the High Court, in the same manner as on actions for wages.⁴

¹ *Thames Iron Work Co. v. Patent Derrick Co.*, 1 John. & H. 93 ; *The Scio*, 1 L. R. Ad. 353.

² *The Harmonie*, 1 W. Rob. 178.

³ *The Skipwith*, 10 L. T. N. S. 43 ; 10 Jur. N. S. 445.

⁴ See *ante*, p. 44, wages.

CHAPTER III.

SECTION I.

Possession.

THE jurisdiction of the Admiralty Division in actions of possession is exercised for a fourfold purpose: (1) to place claimants in possession of (2) or of the earnings of ships to which they may be entitled; (3) to enable a ship to be employed; (4) to examine accounts between co-owners, and to apportion the earnings after such examination.¹ In all such cases, if necessary, the Court can order the vessel the subject of dispute to be sold.¹ Moreover, since all questions as to the title to or ownership of any vessel, or to the proceeds thereof, in the registry, fall within the jurisdiction of this Division, this power is of peculiar use in actions of possession.²

But as regards foreign vessels, though the Court possesses the same jurisdiction derived from its original powers as a maritime Court, yet it will not interfere in questions touching the ownership of foreign vessels, unless with the consent of the parties to the dispute, or of the representative of the country in England, and even then with some reluctance.³

¹ A. C. A. 1861, s. 8. The first two divisions chiefly embrace disputes between rival claimants; the third and fourth, disputes between co-owners. The jurisdiction as to co-owners is confined to matters in respect of ships registered in England or Wales.

² 3 & 4 Vict. c. 65, s. 4.

³ *The See Reuter*, 1 Dods. 24; *The Martin of Norfolk*, 4 C. Rob. 293; *The Evangelistria*, 35 L. T. N. S. 410; *The Agincourt*, 2 L. R. Ad. D. 239.

Whether a claimant is or is not entitled to the possession of a ship or her earnings, depends wholly upon the facts of each particular case, and the principles of law applicable thereto. A discussion of these principles is quite without the scope of this work, since they concern every branch of law; thus the right to possession of a vessel may turn upon the question of fraud or no fraud in a sale, a matter which involves doctrines of the most general description.

The Court recognises equitable claims and equitable defences.¹

Possession
given in
order to
employ
ship.

The Court will decree possession of a ship to the owners of more than a moiety of sixty-four parts, in order that she may be employed for the purpose for which she was built, that is to say, to navigate the seas, not to lie at home unused.² But at the same time it will compel those to whom possession is allowed to give security to the minority to the amount of their interest.³ To enforce this security the minority must bring an action of Restraint, so that the vessel may be arrested, and a bond given payable in default of the return of the ship from her voyage.⁴ But the minority, whilst they do not contribute towards the expenses of the voyage, neither share in its profits.⁵ Owners who do not appear in such actions are presumed to be content with the possession or occupation of the vessel.⁶

Accounts
between
co-owners.

The Court will order accounts to be taken, either as a step in action or in a suit having the taking of accounts for its sole object,⁷ and will apportion and allot the shares to

¹ *The Victoria*, Swa. 408; *The Rose*, 4 L. R. Ad. 6; 42 L. J. Ad. 11, J. A. 1873, s. 25, sub-s. 11, seems to decide this point, which was left unsettled in *The Rose*. See App. I.

² *The Elizabeth and Jane*, 1 W. Rob. 278; *The Kent*, Lush. 495.

³ *The Apollo*, 1 Hagg. 306.

⁴ *Houston v. Hebdon*, 1 Wils. 101; *The Apollo*, *sup.* An action by a mortgagee, unless in possession, against a charterer will not lie: *The Innisfallen*, 1 L. R. Ad. 72; 35 L. J. Ad. 110; and a motion before the judge for an order to this effect is probably as effectual as an action of restraint.

⁵ An. 2 Ch. Ca. 36.

⁶ *The Valiant*, 1 W. Rob. 64.

⁷ *The Idas*, Br. & L. 65.

which claimants may be respectively entitled, or order the ship to be sold and the proceeds divided, or the freight to be brought into Court for the purpose of division.¹ The Court has jurisdiction over the interests of persons who are not co-owners at the time of the commencement of the action, if it arises out of a previous co-ownership, in which they were concerned,² and exercises its jurisdiction as liberally as possible.³

When goods have been piractically seized and afterwards recovered, the Court will order their restitution to their original owners if they apply within a reasonable time, even though they may have come into the hands of a third person.⁴

And if the ship of a pirate has been transferred to a *bond fide* purchaser for valuable consideration, and has not been taken by the pirate from other persons, it will, if seized by the Crown, be restored by an order of the Court to such purchaser.⁵

SECTION II.

Mortgage.

The Admiralty Division, which possessed no original jurisdiction over mortgages,⁶ has now by statute jurisdiction in respect of any mortgage duly registered according to the provisions of the Merchant Shipping Act, 1854, whether or not the ship or proceeds are under the arrest of

¹ *The Maggie*, 1 L. R. Ad. 77. The Court has power to order the sale of a ship the property in which becomes by death or marriage vested in a person not qualified to be the owner of a British ship: A. C. A. 1861, s. 12; M. S. A. 1854, ss. 62, 63, 64, 65.

² *The Lady of the Lake*, 3 L. R. Ad. 29; 39 L. J. Ad. 40.

³ *The Ceylon*, 18 L. T. N. S. 417, *e.g.*, as to damage by wrong doing of one co-owner.

⁴ Bacon's Abridgment, art. Piracy, vol. vi. p. 173, 7th ed.; *The Hercules*, 2 Dods. 253.

⁵ *The Telegrapho*, 3 L. R. P. C. 673; 40 L. J. Ad. 18.

⁶ *The Neptune*, 3 Hagg. 129 (132).

the Court.¹ But if any ship, the mortgage of which is unregistered, is under the arrest of the Court, or the proceeds have been brought into the registry, then a jurisdiction is founded.² By a mortgage the mortgagee acquires an ownership in a vessel, since it is a transfer of all the mortgagor's interest by way of security,³ and he becomes entitled to the freight due when he takes actual or constructive possession of his security.⁴ Meanwhile the mortgagor retains all the rights and powers of ownership, and his contracts in relation to the ship are valid as against the mortgagee so long as they do not interfere with his security.⁵

The rights
of mort-
gagees.

Although it has been enacted that a mortgagee of a British ship only becomes the owner for the purposes of the mortgage, so that he may be protected from claims for which he would otherwise be liable as owner in possession,⁶ yet the mortgage gives him a right, as has been pointed out, to the actual possession of the ship at any time for the purposes of his security. Accordingly, though mortgages may be unregistered, or registered according to the provisions of the Merchant Shipping Act, 1854, yet an unregistered mortgage is good against all persons except registered transferees and mortgagees. Accordingly, as between two unregistered mortgagees, or an equitable mortgagee and the assignee of the freight, the first in time would have the first claim to the ship and freight; and as between a mortgagee of the freight and an unregistered and subsequent mortgagee of the ship, the latter would

¹ A. C. A. 1861, s. 11. As to registration of mortgages, see M. S. A. 1854, ss. 66-75; and M. S. A. 1862, s. 3.

² 3 & 4 Vict. c. 65, s. 3. Such an arrest must be *de jure* as well as *de facto*: *The Evangelistria*, 35 L. T. N. S. 410; *Taylor v. Caryl*, 20 Howard, 583 (599) (A.).

³ *Keith v. Burrows*, 1 L. R. C. P. D. 722; 45 L. J. C. P. D. 1876; 2 L. R. C. P. D. 163; 46 L. J. C. P. D. 452; 46 L. J. C. P. (H. L.) 801.

⁴ *Liverpool Marine Co. v. Wilson*, 7 L. R. Ch. 507; 41 L. J. Ch. 798.

⁵ *Collins v. Lamport*, 4 De G. J. & S. 500.

⁶ *Dickinson v. Kitchen*, 8 E. & B. 789.

have the first claim to the ship and freight. But as between a registered and unregistered mortgagee, the former, though he may be last in point of time, is first in point of rank.¹

But since after a first mortgage the legal estate in the ship has passed to the mortgagee, if there then comes an equitable mortgagee of the freight, for the first mortgage carries with it the legal right on taking possession to the freight; and, thirdly, an equitable or second mortgage of the ship, without notice of the mortgage of the freight, the last two incumbrancers would take according to the time of their securities, yet if the first mortgagee of the ship and the mortgagee of the freight are one and the same person, his claim to the freight is a prior right to that of the second mortgagee of the ship.²

A mortgage of a British ship must be in the form prescribed by the Merchant Shipping Act, 1854. An unfinished ship, incapable of registration, can be equitably mortgaged by the deposit of the builder's certificate.³ The Court will act on equitable principles in adjudicating upon cases of mortgage; thus it will look behind the register, so as to discover the real character of the transaction, so that what is on the face of it an absolute transfer may be treated if such was the intention of the parties as a mortgage.⁴

The Court
will use
equitable
remedies.

And on the same principle equities will be enforced between the parties to a mortgage; all transactions which have taken place, as well as the registered documents, being fully considered,⁵ and equally also the Court will correct mistakes.⁶

¹ *Keith v. Burrows*, 1 L. R. C. P. D. 722; 45 L. J. C. P. D. 876; *Wilson v. Wilson*, 14 L. R. Eq. 32; 41 L. J. Ch. 423.

² *The Liverpool Marine Credit Co. v. Wilson*, 7 L. R. Ch. 507; 41 L. J. Ch. 798.

³ *Ex parte Winter*, 20 L. R. Eq. 746; 44 L. J. Bank. 107.

⁴ *The Innisfallen*, 1 L. R. Ad. 72; 35 L. J. Ad. 110.

⁵ *The Cathcart*, 1 L. R. Ad. 614; M. S. A. 1862, s. 6.

⁶ *The Rose*, 4 L. R. Ad. 6; 42 L. J. Ad. 11; and see also *J. A.* 1873, s. 25, sub-s. 11.

A mortgagee has no maritime lien on the ship, so that he ranks after all claimants, except those who have supplied necessaries to British ships.¹

SECTION III.

Bottomry and Respondentia.

The contract of bottomry.

The Admiralty Division has almost sole jurisdiction over questions relating to bottomry and respondentia bonds.² Bottomry is a contract in the nature of a mortgage by which money is borrowed to be applied to the necessities of a ship. The keel or bottom of the ship (a part signifying the whole) and the freight which it will earn is the security thereby given for the repayment of the sum lent, together with interest. Both principal and interest are forfeited if the ship is lost on the voyage. But no property passes as by mortgage, and no possession is given as by a pledge.³

Of respondentia.

Respondentia is a similar contract. The security here is the cargo laden on board, and the money is raised for the necessities of the cargo only.

The form of the contract.

The power of the Court to enforce bottomry bonds (under which term respondentia bonds will be included) depends on their validity. The elements of such validity are various: 1. The contract must be in writing.⁴ In form

¹ *The Two Ellens*, 4 L. R. P. C. 161; 41 L. J. Ad. 33.

² *Stainbank v. Shepherd*, 13 C. B. 418 (444); *Johnson v. Shippen*, 1 Salk. 34; *The Cargo ex Sultan*, Swa. 510; 5 Jur. N. S. 1060. The Court of Chancery used sometimes to give relief on bottomry bonds, but it is becoming less and less frequent to invoke the aid of that Division; and as under the Judicature Act, 1873, s. 24, equitable remedies are to be administered in every Division, the Admiralty will be as efficient a tribunal as the Chancery Division.

³ *Stainbank v. Shepherd*, 13 C. B. 418 (441).

⁴ *Ex parte Halkett*, 19 Vesey, 474; *The Mary Ann*, 1 L. R. Ad. 13.

it is generally a bond, but it may be in any shape so long as its essential particulars are set forth.¹

These are, the parties to the contract; the amount of the loan;² the premium or interest agreed upon; the name of the ship; the voyage during which the risk is to be incurred; the fact that the repayment of the loan depends on the safe arrival of the ship at her destination; and that the vessel, her apparel, and furniture are hypothecated for the loan.

The voyage,³ and the fact that the lenders are incurring maritime risk,⁴ must appear on the face of the contract in order to make it valid. The remaining elements must also appear, since they can only be proved by the document itself. The instrument will receive as liberal a construction as possible from the Court.⁵ But a bond may be good as to one part and bad as to another: the bad, so long as it is not material to the existence of the contract, does not invalidate the good part,⁶ and the Court will enforce those portions which it can uphold.⁷

2. As regards the subject of the loan.

Both the ship and freight may be bottomried, but the freight must be that to be earned in the particular voyage during which the maritime risks are to be incurred, not that which may accrue from a subsequent voyage.⁸ The cargo may be hypothecated, but only for its own benefit;⁹

¹ *The Kynnersley Castle*, 3 Hagg. 1; *The Mary Ann*, p. 55.

² It is advisable, but not necessary, to state reasons for such a loan; for necessity is the foundation of such a bond, though not of the essence of the contract.

³ *Western v. Wildy*, Skinner, 152; *Williams v. Steadman*, Holt, 126; *The Jane*, 1 Dods. 461.

⁴ But it is sufficient if this fact can be collected from the document as a whole: *The Nelson*, 1 Hagg. 169; *The Emancipation*, 1 W. Rob. 124; *The Royal Arch*, Swa. 281.

⁵ *The Kynnersley Castle*, 3 Hagg. 1; *The Vibilia*, 1 W. Rob. 5; *The Karnak*, 2 L. R. Ad. 289; 18 L. T. N. S. 661.

⁶ *The Augusta*, 1 Dods. 283; *The Staffordshire*, 4 L. R. P. C. 194 (209); 41 L. J. Ad. 49.

⁷ *The Edmond*, Lush. 57; 27 L. J. Ad. 76.

⁸ *The Staffordshire*, 4 L. R. P. C. 194; 41 L. J. Ad. 49.

⁹ *The Gratitude*, 3 C. Rob. 240.

yet since the master does not become the agent of the owners of the cargo until it is placed on board, this must be done before it can be hypothecated.¹

Borrowers. 3. The master is usually the person who borrows money on bottomry, and he has a right so to borrow, as between himself and the world at large, if he is the apparent master, though he may not have this right as between himself and the owner of the ship.² The owner may give a bottomry bond if both he and his vessel are at a foreign port.³

Lenders. Any person may lend money on bottomry; but a ship's agent, occupying as he does an exceptional relation to the ship, must, in order to lend with validity, give notice to the master that he cannot reasonably allow the owners credit beyond a certain limit, and will only supply more money on a bond.⁴ But the consignees of a cargo may lend money on a bond on the ship, if it were reasonable under the circumstances that they should secure themselves for advances.⁵ A creditor cannot take a bond for his own subsisting debt, though he may for money which he has advanced to pay other parties.⁶

The locality where the bond was given does not affect the validity of the contract if otherwise good.⁷

Necessity the foundation of bottomry. 4. The necessity for hypothecation is the foundation of the bond,⁸ that is, for money solely and indispensably required for the wants of the ship or of the cargo, in order that the particular voyage on which the vessel is bound may be continued.⁹ Necessity in relation to bottomry has received this judicial definition: "A combination of events

¹ *The Jonathan Goodhue*, Swa. 355; *The Glenmanna*, Lush. 115.

² *The Jane*, 1 Dods. 461; *The Orelia*, 3 Hagg. 75; *The Mary Ann*, 1 L. R. Ad. 13.

³ *The Duke of Bedford*, 2 Hagg. 294; *The Helgoland*, Swa. 491; 5 Jur. N. S. 1179.

⁴ *The Hero*, 2 Dods. 143; *The Staffordshire*, 4 L. R. P. C. 194; 41 L. J. Ad. 49.

⁵ *The Alexander*, 1 Dods. 278.

⁶ *The Ida*, 3 L. R. Ad. 542; 41 L. J. Ad. 542.

⁷ *The Trident*, 1 W. Rob. 29.

⁸ *The Nelson*, 1 Hagg. 169.

⁹ *The Osmanli*, 3 W. Rob. 198; 14 Jur. 93.

which would prevent the completion of the voyage with profit unless money should be raised by bottomry."¹ If the ship could have continued her voyage without such a loan, the bond is void.

The existence of this necessity depends on the facts of each particular case, as proved by ordinary evidence.² The following instances will exemplify the rule: Bond held invalid in respect of sums due to a creditor who has previously furnished necessities on personal credit;³ held valid when given to obtain the release or to prevent the arrest of a ship in a foreign port;⁴ when executed after advances have been made if in pursuance of an agreement for bottomry, or in contemplation of such a security;⁵ invalid for charges relating to outward cargo unless the ship was liable to arrest for them;⁶ and for insurance⁷ fees of consul.⁸

Assuming that the money is required for the necessities of the ship, the second element of necessity is the impossibility of obtaining funds in any other manner than by hypothecation of the ship, freight, or cargo. This is also a pure question of fact, whether money could have been procured by any other means, for if personal security is available the bond is invalid.⁹ But small sums lent contrary to this and the preceding rule will not be excluded, for it is contrary to the interests of commerce to be too careful of insignificant details.¹⁰

5. The consent of the owners raises a legal but rebut-

Communication with owners.

¹ *The Karnak*, 2 L. R. P. C. 505; 38 L. J. Ad. 57.

² *The Karnak*, *sup.*

³ *The Augusta*, 1 Dods. 283; *The North Star*, Lush. 45; 29 L. J. Ad. 73; *The Karnak*, 2 L. R. Ad. 289.

⁴ *The Prince George*, 4 Moo. P. C. 21; *The Laurel*, Br. & L. 191; 33 L. J. Ad. 17.

⁵ *The Karnak*, 2 L. R. Ad. 289; 18 L. T. N. S. 661.

⁶ *The Edmond*, Lush. 57; 27 L. J. Ad. 76.

⁷ *The Serafina*, Br. & L. 277.

⁸ *The Zodiac*, 1 Hagg. 320.

⁹ *The Hero*, 2 Dods. 139; *The Empire of Peace*, 39 L. J. Ad. 12; 21 L. T. N. S. 763; and see cases collected under previous rule.

¹⁰ *The Trident*, 1 W. Rob. 29.

table presumption of necessity.¹ Consequently, communication with them by the master before hypothecation, where it is possible, is absolutely required, in order to establish the validity of a bond;² and a separate communication with the owners of the cargo, where reasonable, is also absolutely necessary.³

Duties of lender.

6. The lender also, if he does not make such reasonable inquiries as are within his power, will avoid the bond.⁴ Such inquiries must be as to the need of money for the ship, to the impossibility of obtaining it save by bottomry, and to communications by the master to the owners. The repayment of the loan must be contingent on the safe arrival of the ship,⁵ otherwise it is not a contract of bottomry, and the Admiralty Division has no power to enforce it. The loan is repayable in the case of a constructive total loss, where the ship has been sold at an intermediate port⁶ or lost after deviation, and is only gone when there is an absolute and actual total loss of the ship or cargo at sea⁷ or by capture of an enemy.⁸

Repayment of loan.

Interest.

It is usual for the borrower to pay a premium or interest for the loan or on the sum lent. When a dispute arises as to the validity of the bond, the absence or presence, the small or large amount of interest, are circumstances which form important circumstantial evidence. Thus a low premium raises a strong presumption against the validity of the bond.⁹ If the interest is exorbitant, the Court will

¹ *The Royal Arch*, Swa. 269.

² *The Lizzie*, 2 L. R. Ad. 254; 19 L. T. N. S. 71; *The Panama*, 2 L. R. P. C. 199; 39 L. J. Ad. 37; *The Onward*, 42 L. J. Ad. 61; 28 L. T. N. S. 204.

³ *The Lizzie*, 2 L. R. Ad. 254; 19 L. T. N. S. 71; *The Karnak*, 2 L. R. Ad. 289; 37 L. J. Ad. 41; *The Hamburg*, 2 Moo. P. C. N. S. 289; Br. & L. 253.

⁴ *The Nelson*, 1 Hagg. 169 (176); *The Prince of Saxe Coburg*, 3 Hagg. 287; *The Faithful*, 31 L. J. Ad. 81.

⁵ *The Atlas*, 2 Hagg. 49.

⁶ *Western v. Wildy*, Skinner, 152.

⁷ *The Great Pacific*, 2 L. R. P. C. 516; 30 L. J. Ad. 45.

⁸ *Joyce v. Williamson*, 3 Doug. 164.

⁹ *The Emancipation*, 1 W. Rob. 124; *The Royal Arch*, Swa. 269 (286).

reduce it to proper proportions.¹ When no premium is agreed upon, the Court will, if it pronounce for the bond, refer the question of the amount of interest to be paid to the Registrar.²

A bond may be given as a collateral security if all the circumstances required to establish its validity are present.³ The sum lent may be insured by the lender.⁴ Delay in enforcing a bond postpones it to the claims of those who have pursued their rights with diligence, and will, if very gross, altogether avoid the bond.⁵ But an agreement whereby payment is postponed, though it may be legally valid, cannot be enforced by the Admiralty Division, in pursuance of its peculiar jurisdiction.⁶

Whilst the Admiralty Division recognises the negotiability of bottomry bonds, it aids their transfer with reluctance.⁷

It is an essential element of a bottomry bond that it confers a maritime lien on its subject for its amount and for the interest agreed on.

The law by which bonds granted by the master of a foreign ship are to be judged is that of the flag.⁸

The Court allows interest on sums secured by bonds from the time at which the bond is due,⁹ and has enforced agreements to give bonds.¹⁰

¹ *The Huntley*, Lush. 24 (reduced from 40 per cent.); *The Heart of Oak*, 1 W. Rob. 205 (215).

² *The Change*, Swa. 240.

³ *The Staffordshire*, 4 L. R. P. C. 194; 41 L. J. Ad. 49; *The Onward*, 42 L. J. Ad. 61; 28 L. T. N. S. 204.

⁴ *The Indomitable*, Swa. 446. It is doubtful if an agreement by which the borrower insures for the lender, does not vitiate the contract, as the risk is not then incurred.

⁵ See *The Indomitable*, *sup.*

⁶ *The Royal Arch*, Swa. 269 (282). There seems to be no reason why delay, so long as no one's rights are prejudiced thereby, should invalidate the rights of the lender. See *The Helgoland*, Swa. 491 (499); *The Rebecca*, 5 C. Rob. 102.

⁷ *The Rebecca*, 5 C. Rob. 102.

⁸ See *ante*, Breach of Contract, p. 33.

⁹ *The Edmond*, Lush. 211; 30 L. J. Ad. 128.

¹⁰ *The Aline*, 1 W. Rob. 111.

CHAPTER IV.

SECTION I.

Forfeiture of Ships.

Forfeiture of ship. A SHIP is forfeited to the Crown if, (a) any unauthorized person uses the British flag ; or (b) if the owner or master does any act or permits papers to be carried with intent to conceal the British character of the ship ; or (c) if any unqualified person obtains a legal or beneficial interest in a British ship ; or (d) if any person makes a false declaration touching his qualification for the ownership of British ships.¹ To carry out these rules any commissioned officer on full pay, or any British officer of customs, or any British consular officer, may seize such ship, and then proceed by an ordinary action in the Admiralty Division to obtain a declaration that the ship shall be forfeited to the Crown. The right of the Crown to have a ship forfeited arises at the instant when the wrongful act is done, and like a maritime lien clings to the ship, so that it overrides the right of a subsequent *bond fide* purchaser without notice of the fraud.²

¹ M. S. A. 1854, s. 183 ; *The Sceptre*, 35 L. T. N. S. 429.

² *Wilkins v. Despard*, 5 T. R. 112 ; *The Annadale*, 2 L. R. Ad. D. 179 ; 36 L. T. N. S. 259. Affirmed on appeal, 2 L. R. Ad. D. 218 ; 36 L. T. N. S. 139.

SECTION II.

Removal of Master.

The Court has power to remove the master of a British ship on the application of an owner, part owner, consignee, agent of the owner, certificated mate, or one third of the crew, when it is proved by oath that such removal is necessary.¹ The amount of necessity to cause this power to be exercised is a matter wholly for the discretion of the judge.² A new master may be appointed by the Court in place of one who has been removed, with the consent of the owner, agent of the owner, or consignee of the ship, if within the jurisdiction of the Court. If they are without the jurisdiction, then the judge may appoint the new master on his sole responsibility. The Court has also jurisdiction—if the applicant shows a valid registered title to the vessel—to order the former master to deliver up the certificate of registry and the ship's papers.³

Removal
of master.

SECTION III.

Actions for Injuries inflicted by Persons on the High Seas.

The Admiralty Division possesses in virtue of its ancient maritime jurisdiction power to entertain actions *in personam* for injuries inflicted by one person to another on the high seas. It is a jurisdiction which, though it exists, is not at the present day employed, but which nevertheless cannot be considered as obsolete.⁴

The juris-
diction of
the Court.

¹ M. S. A. 1854, s. 240. Any Court having Admiralty jurisdiction possesses this power.

² *The Frances*, 2 Dods. 420 ; *The Royalist*, Br. & L. 46.

³ *The St. Olafs*, 2 L. R. Ad. D. 113 ; 35 L. T. N. S. 429.

⁴ *The Ruckers*, 4 C. Rob. 73.

CHAPTER V.

The Order of Claims.

General
rule.

It is an invariable rule that claims against the *res* rank in the inverse order of their attachment: the last in time is the first to be satisfied.¹ Subject to this general principle their respective places are: I. Salvage of Life.² II. Salvage of property.³ III. Claims for damage.⁴ IV. Wages and disbursements of seaman and master.⁵ V. Bottomry.⁶ VI. Mortgage.⁷ VII. Necessaries, so far as regards British ships.⁸

Bottomry. In claims by holders of bottomry bonds, where there are two or more bonds, they rank according to the main rule, the last having precedence, and so on, to the first in the order of time,⁹ unless the holders of bonds of different dates have acted in concert and privity as though they were the lenders of one sum, when their claims will be paid *pro rata*.¹⁰ If a bond is given upon ship, freight, and cargo, the proceeds of the ship and freight must be exhausted before the cargo can be touched; ¹¹ and on the

¹ *The Cargo ex Galam*, Br. & L. 167.

² M. S. A. 1854, a. 459; *The Coromandel*, Swa. 205.

³ *The Gustaf*, Lush. 506; 31 L. J. Ad. 207.

⁴ *The Linda Flor*, Swa. 309.

⁵ *The Feronia*, 2 L. R. Ad. 65; 37 L. J. Ad. 60; *The Union*, Lush. 128; 30 L. J. Ad. 17; and p. 64.

⁶ *The Cargo ex Galam*, *sup.*

⁷ *The Two Ellens*, 4 L. R. P. C. 160; 41 L. J. Ad. 33.

⁸ *The Two Ellens*, *sup.*

⁹ *The Elisa*, 3 Hagg. 87.

¹⁰ *The Exeter*, 1 C. Rob. 173.

¹¹ *The Bonaparte*, 3 W. Rob. 292.

same principle, if of two or more bonds the latest is on ship, freight, and cargo, and the others on ship and freight, the last must be paid out of the ship and freight, even though by so doing the other bonds will not be satisfied.¹

When the cargo alone is hypothecated, the ship and freight will, though not mentioned in the bond, become liable before the cargo can be touched; but if a bond on the cargo only is subsequent to one on ship and freight, the holder of this instrument will have the first claim contrary to the usual principle as to time, because the lender on the security of the cargo might have specifically mentioned the ship so as to give him a claim against the vessel and freight.² When the ship and freight belong to different persons they will usually bear a ratable proportion of the payment of the bond.³

Subject to these rules, assets as a general principle are equitably marshalled.⁴

When a bondholder and a master make claims against a ship and freight and cargo, the claim of the master, if bound personally by the bond, will be postponed to that of the bondholder, unless the latter can be postponed without prejudice to his rights, as by allowing his claim to be satisfied from the cargo.⁵ And it scarcely needs pointing out that a bond made subsequent to the date when wages have become due takes precedence of such wages.⁶

As regards necessaries.⁷ Since those who have supplied foreign ships with necessaries have a lien for their claim, ^{Necessaries, wages, &c.}

¹ *The Priscilla*, Lush. 1; 1 L. T. N. S. 272.

² *The Gratitude*, 3 C. Rob. 240 (264); *The Constancia*, 4 No. of Ca. 285; *The Eliza*, 3 Hagg. 87.

³ *The Dowthorpe*, 3 W. Rob. 73 (81).

⁴ *The Priscilla*, Lush. 1; 1 L. T. N. S. 272.

⁵ *The Edward Oliver*, 1 L. R. Ad. 379; 36 L. J. Ad. 13; *The Daring*, 2 L. R. Ad. 260; 37 L. J. Ad. 29; *The Eugenie*, 4 L. R. Ad. 123; 29 L. T. N. S. 314.

⁶ *The Hope*, 28 L. T. N. S. 287.

⁷ *The Two Ellens*, 4 L. R. P. C. 160; 41 L. J. Ad. 33; *The Ella A. Clerk*, Br. & L. 32; 32 L. J. Ad. 11.

mortgagees have a prior claim only in the case of necessities supplied to British ships. If a fund in Court is insufficient to pay each of several claimants in full, their claims will be satisfied *pro rata*. But if one has actually obtained a judgment before the others, their claims will be postponed until his judgment is satisfied.¹ If a master is part-owner of a ship, his claim for wages and disbursements, contrary to the general rule, will rank after those of persons who have supplied necessities.²

And in regard to wages generally, the date at which they accrue is a matter of much importance, for if they become due at the end of a voyage on which a bottomry bond has been given, they rank before such bond, in consequence of the cardinal principle as to the priority of liens which has already been noted.³

¹ *The Desdemona*, Swa. 158.

² *The Jenny Lind*, 3 L. R. Ad. 529 ; 41 L. J. Ad. 63.

³ *The Hope*, 28 L. T. N. S. 287.

CHAPTER VI.*

INFERIOR COURTS OF ADMIRALTY AND APPEALS THEREFROM.

SECTION I.

The County Courts.

THE Admiralty jurisdiction of the county courts is entirely statutory. It is to be exercised either by all or only by certain specified county courts. A limited jurisdiction in Admiralty was first conferred upon the county courts by the Merchant Shipping Acts of 1854 and 1862, and could be exercised by *all* county courts,¹ but only in the cases following:

First. In the event of an injury having been in any part of the world caused by a foreign ship to British property, it is competent for the judge of any court of record in the United Kingdom (which includes a county court), upon its being shown to him by any person applying summarily that such injury was probably caused by the misconduct or want of skill of the master or crew, to direct the vessel to be detained until satisfaction is made for the alleged wrong, or security is given to abide the event of a legal proceeding in respect of it. To found the jurisdiction the offending vessel must be found in a port or river of the United Kingdom or within three miles of the coast thereof.²

¹ But now by 31 & 32 Vict. c. 71, s. 5, no county court, except those appointed by Order in Council, is to have jurisdiction in Admiralty.

² 17 & 18 Vict. c. 104, ss. 527-529. S. 527 is confined to damage

* This Chapter is, with the exception of my final supervision, the work of James Williams, Esq., Barrister-at-Law, of the Northern Circuit.

Salvage.

Second. The jurisdiction in salvage cases conferred by Part VIII. of the Merchant Shipping Act, 1854, upon two justices is extended to all cases in which the value of the property does not exceed 1000*l.*, and is given to a county court judge.¹

Allotment
notes.

Third. The jurisdiction over allotment notes of seamen's wages, exercised in a summary manner by justices, may be exercised by a county court.²

But the County Courts Admiralty Jurisdiction Act, 1868,³ amended and extended in 1869, gave the county courts their real Admiralty jurisdiction.⁴ These Acts apply, however, only to certain county courts, defined by Order in Council,⁵ while the two Merchant Shipping Acts were, until the Act of 1868, perfectly general in their application. The effect of the latter Act is to leave the jurisdiction under the Merchant Shipping Acts untouched, as far as regards county courts having Admiralty jurisdiction under that Act, but to confine its exercise to such courts.

Under the
County
Courts
Admiralty
Jurisdiction
Acts.

The jurisdiction of the county courts under the recent Acts is both *in rem* and *in personam*,⁶ but is limited by—

- 1st. The amount claimed, or (in salvage claims), the value of the property saved ;
- 2nd. The nature of the claim ;
- 3rd. The place in which the cause of action arose.

to property, and does not extend to injuries to the person : *Harris v. Owners of The Franconia*, 2 L. R. O. P. D. 173 ; 46 L. J. C. P. 363. And as to detention, see also 31 & 32 Vict. c. 71, s. 22.

¹ 25 & 26 Vict. c. 63, s. 49. Under this Act the judge sits as an arbitrator. The fact of there being a sum agreed does not oust the jurisdiction of the county court judge, if the sum seem to him not a reasonable amount : *Beadnell v. Beeson*, 3 L. R. Q. B. 439 ; 37 L. J. Q. B. 173. The practice under 25 & 26 Vict. c. 63, s. 49, is regulated by the County Court Rules, 1875, Ord. xl. superseding r. 276 of the old Common Law Rules. The proceedings are commenced by entering a plaint and issuing a summons thereon (S. C.). For the jurisdiction of justices in such cases, see *infra*.

² 17 & 18 Vict. c. 104, s. 169. For the jurisdiction of justices in wages, see *infra*.

³ 31 & 32 Vict. c. 71.

⁴ 32 & 33 Vict. c. 51.

⁵ Order of Jan. 14, 1869.

⁶ 32 & 33 Vict. c. 51, s. 3.

By the Act of 1868 the jurisdiction of a county court (1) ^{As to amount claimed.} having Admiralty jurisdiction was confined to—

- (a) Any claim for salvage in which the value of the property saved does not exceed 1000*l.*, or in which the amount claimed does not exceed 300*l.*;¹
- (b) Any claim for towage, necessities,² or wages, in which the amount claimed does not exceed 150*l.*;
- (c) Any claim for damage to cargo, or damage by collision, in which the amount claimed does not exceed 300*l.*;
- (d) Any such claim as aforesaid, where the limit of amount is exceeded, but the parties agree in writing³ to submit to the jurisdiction.⁴

The Act of 1869 extended this jurisdiction to—

- (e) Any claim for damage to a ship, whether by collision or otherwise, in which the amount claimed does not exceed 300*l.*⁵
- (f) Any claim arising out of any agreement made in relation to the use or hire of any ship, or in relation to the carriage of goods in any ship,⁶ and also over any claim in tort in respect of goods carried in any ship, in which the amount claimed does not exceed 300*l.*

¹ A county court can entertain a suit for distribution of salvage where the amount which the Court is asked to apportion does not exceed 300*l.*, though the value of the property saved exceeds 1000*l.*: *The Glannibanta*, 2 L. R. Ad. 45; 36 L. T. 27.

² In a cause of necessities, in order to deprive a county court of the Admiralty jurisdiction given to it, it must be shown to the Court before it pronounces judgment that the owner is domiciled in England: *Ex parte Michael*, L. R. 7 Q. B. 658; 41 L. J. Q. B. 349; 26 L. T. N. S. 871.

³ By r. 38 of the Rules under the County Courts Admiralty Jurisdiction Act, 1868, a consent in writing, signed by the solicitors in a suit, might, by permission of the registrar, be filed, and become an order of court. The County Court Rules, 1875, contain no such provision.

⁴ 31 & 32 Vict. c. 71, s. 3.

⁵ 32 & 33 Vict. c. 51, s. 4.

⁶ This does not apply to a claim by brokers for commission declared to be due to them in the charterparty: *The Nuova Raffaelina*, 3 L. R. Ad. 483; 41 L. J. Ad. 37.

The limit of jurisdiction, as in cases under the Act of 1868, may be exceeded by the agreement in writing of the parties.¹

(2) As to
the nature
of the
claim.

The interpretation of these provisions as to the nature of the claim has caused considerable difficulty, and led to a difference of opinion in the Superior Courts. The High Court and the Courts of Common Pleas and Exchequer have held that the jurisdiction of a county court in Admiralty is not more extensive than that of the High Court, and that a county court has no jurisdiction to entertain the case of a collision in the Thames between barges propelled by oars only;² of necessities where the vessel belongs to an English port, and a part-owner is domiciled in England;³ of breach of a charterparty;⁴ of demurrage and freight;⁵ or of a claim against a pilot for damage caused by a vessel under his charge.⁶ The Privy Council, on the other hand, have held that the county court has jurisdiction in cases of claims arising out of charterparties, although the High Court may have no jurisdiction in such cases.⁷ It has been held that the Common Law Courts were not bound by the decisions of the Privy Council.⁸ Where no possible construction of the County Courts Admiralty Jurisdiction Acts will give jurisdiction to the county courts, as in claims founded on bottomry, they cannot exercise jurisdiction.⁹

(3) As to
the place.

As to place, an Order in Council can give any county court Admiralty jurisdiction, and assign to it as its

¹ 32 & 33 Vict. c. 51, s. 2.

² *Everard v. Kendall*, L. R. 5 C. P. 428; 39 L. J. C. P. 234.

³ *The Dowse*, 3 L. R. Ad. 135; 39 L. J. Ad. 46.

⁴ *Cargo ex Argos*, 3 L. R. Ad. 568; 41 L. J. Ad. 89; *Simpson v. Blues*, L. R. 7 C. P. 290; 41 L. J. C. P. 121.

⁵ *Cargo ex Argos, supra*; *Gunnestad v. Price*, L. R. 10 Ex. 65; 44 L. J. Ex. 44.

⁶ *The Alexandria*, 3 L. R. Ad. J. 574; 41 L. J. Ad. 94; *Flower v. Bradley*, 44 L. J. Ex. 1; 31 L. T. N. S. 702.

⁷ *Cargo ex Argos*, L. R. 5 P. C. 134; 42 L. J. Ad. 1.

⁸ *Flower v. Bradley, supra*; *Merchant Shipping Co. v. Armitage*, L. R. 9 Q. B. 105; 43 L. J. Q. B. 28; *Smith v. Brown*, L. R. 6 Q. B. 729; 40 L. J. Q. B. 220; *Leask v. Scott*, 2 L. R. Q. B. D. 380.

⁹ *The Elpis*, 4 L. R. Ad. 1; 42 L. J. Ad. 43.

district for Admiralty purposes any part or parts of any one or more district or districts of county courts. The district so constituted for that court, with the parts of the sea (if any) adjacent to it, to a distance of three miles from the shore, is its district for Admiralty purposes;¹ and its jurisdiction is strictly confined within these limits,² with the exception that certain orders, &c., may be made by the county court judge without the district of his court.³

Although the jurisdiction of the High Court in cases within the County Courts Admiralty Jurisdiction Acts and the Merchant Shipping Acts is concurrent with that of the county courts, the jurisdiction of the latter is protected by the provisos as to costs.⁴

Concurrent jurisdiction of High Court.

Proceedings in an Admiralty cause are to be commenced:

Commencement of proceedings.

- (1) In the county court within the district of which the vessel or property to which the cause relates is at the commencement of the proceedings;
- (2) If the foregoing rule is not applicable, then in the county court in the district of which the owner of the vessel or property to which the cause relates, or his agent in England, resides; or if such owner or agent does not reside within any such district, then in the county court having Admiralty jurisdiction, the district whereof is nearest to the place where such owner or agent resides;
- (3) If the last rule is not applicable, then in such county court having Admiralty jurisdiction as General Orders direct;
- (4) In any case in the county court, or one of the county courts having Admiralty jurisdiction, to which the parties agree by memorandum to give jurisdiction.⁵

¹ 31 & 32 Vict. c. 71, s. 2; Order in Council of Jan. 14, 1869.

² *The John Evans*, 43 L. J. Ad. 9; 30 L. T. N. S. 308.

³ 38 & 39 Vict. c. 50, s. 4.

⁴ For these, see various titles, *ante*, Salvage, Damage, &c.

⁵ 31 & 32 Vict. c. 71, s. 21.

The cause may be heard either at the usual courts held within the jurisdiction, or at special courts to be held after notice of an Admiralty cause having arisen within the jurisdiction.¹

Transfer
of proceed-
ings.

(1) Of the
whole pro-
ceedings.

Under certain circumstances, Admiralty cases may be transferred from a county court to the High Court, or from one county court to another.² This transfer may be of the whole or of a part of the proceedings. On motion by any party to an Admiralty cause pending in a county court,³ the High Court may, if it see fit, with previous notice to the other party, transfer the cause to the High Court, and may order security for costs, or impose such other terms as to the Court may seem fit.⁴

In this case the transfer is entirely at the discretion of the High Court. If during the progress of an Admiralty cause in a county court it appears to the Court that the subject-matter exceeds the limit in respect of amount of the Admiralty jurisdiction of the Court, the Court is to transfer the cause to the High Court, unless the parties agree to confer jurisdiction upon the county court, or unless the judge of the High Court in his discretion orders the cause to be prosecuted in the county court in which it was commenced.⁵

In this case transfer is not discretionary, but compulsory, subject to the exceptions just mentioned. If during the progress of an Admiralty cause in a county court it appears to the Court that it could be more conveniently prosecuted in some other county court, or in the High

¹ S. 13; County Court Rules, 1875, Ord. xxxiii. rr. 1-3.

² There is no power of ordering the trial in a county court of an action begun in the High Court. 30 & 31 Vict. c. 142, s. 7, applies only to Common Law actions of contract.

³ The transfer may be made upon intervention of any person claiming interest in the vessel, whether the interest be cognizable by the Court or not: County Court Rules, 1875, Ord. xxxiii. r. 10.

⁴ 31 & 32 Vict. c. 71, s. 6.

⁵ S. 7. In this section there is no express provision for the abandonment by the plaintiff of the excess of his claim, as in the County Courts Acts. It seems doubtful whether s. 34 is sufficient to render the provisions of those Acts available.

Court, the Court may transfer it thereto.¹ By these provisions the High Court may transfer a cause to itself from a county court, although the cause may relate to matters over which the High Court has no original jurisdiction, as a claim in respect of demurrage.² But if the claim is one over which the county court has no jurisdiction (as a claim for bottomry), the High Court on transfer of the cause cannot entertain it.³ If any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the county court, the High Court may, at its discretion, order that the whole proceeding be transferred to the High Court, or any division thereof.⁴

The above enactments relate to the *whole* proceedings. But by the Act of 1868, part of the proceedings may be transferred. Where under process on any decree or order of a county court in an Admiralty cause, a vessel or property would or might be sold, then, if the owner of the vessel or property desires that the sale should be conducted in the High Court instead of in the county court, he is entitled, on security for costs being first given, and subject and according to such other provisions as General Orders direct,⁵ to obtain an order of the county court for transfer of the proceedings for sale. If, however, the county court judge thinks fit, the order may be for the transfer also of the subsequent proceedings in the cause the High Court has jurisdiction over, and all powers and authorities relating to such transferred proceedings.⁶

The practice as to institution, summons, appearance, Institution, summons, &c.

¹ S. 8. In cases within the jurisdiction of the Cinque Ports, causes may be transferred to the Court of Admiralty there, instead of to the High Court.

² *The Swan*, 3 L. R. Ad. 314; 40 L. J. Ad. 8. See *Cargo ex Argos*, p. 68.

³ *The Elpis*, 4 L. R. Ad. 1; 42 L. J. Ad. 43.

⁴ 36 & 37 Vict. c. 66, s. 90; County Court Rules, 1875, Ord. xxxiii. rr. 19, 20.

⁵ County Court Rules, 1875, Ord. xxxiii. rr. 29–31.

⁶ 31 & 32 Vict. c. 71, s. 23.

arrest,¹ release, cross-action, notice of defence in collision, tender, payment out of court, appraisement, records, and copies, is based upon that of the High Court, and depends upon the County Court Rules, 1875.²

Cause, how heard. If the cause is not transferred, the county court judge must proceed to hear it as ordinary civil causes are heard.³

Assessors. In any Admiralty cause of salvage, towage, or collision, the county court judge may, if he think fit, and on the request of either party must, be assisted by two nautical assessors in the same way as the judge of the High Court is assisted by nautical assessors.⁴

In any Admiralty or maritime cause he may, if he think fit, or at the request of either party, be assisted by two mercantile assessors.⁵

County court has same power of relief as High Court. Every inferior Court having Admiralty jurisdiction has, as regards all causes of action within its jurisdiction, as ample powers of relief as the High Court in a similar case;⁶ and the rules of law of the High Court receive effect in all Courts in England, so far as the matters to which such rules relate are cognizable by such Courts.⁷

Enforcement of judgments. Judgments are enforced in the same manner as in ordinary civil causes in a county court, except where otherwise provided.⁸ For the execution of any judgment or order of a county court in an Admiralty cause the

¹ This is expressly confined by 31 & 32 Vict. c. 71, s. 22, within the limits there mentioned. If a ship is under the arrest of the High Court, and a cause is instituted in the county court, she ought to be arrested in the county court action: *The Turliani*, 32 L. T. N. S. 841. And see *The Rio Lima*, post, p. 74.

² Ord. xxxiii.

³ 31 & 32 Vict. c. 71, s. 10.

⁴ *Ib.*

⁵ 32 & 33 Vict., 51, s. 5; County Court Rules, 1875, Ord. xxxiii. rr. 42-46. The assessors are paid according to the amount claimed, and these payments are, unless otherwise ordered, costs in the cause.

⁶ 36 & 37 Vict. c. 66, s. 89.

⁷ S. 91.

⁸ 31 & 32 Vict. c. 71, s. 12; County Court Rules, 1875, Ord. xix. r. 1. The exception is illustrated by the proceedings against an unknown defendant, p. 73.

Court has power to order, and the registrar on such order to seal and issue, and any officer of any county court to execute, process according to General Orders,¹ unless the owner have obtained an order for transfer.² In an action against an unknown defendant, the vessel is not to be taken in execution, but may be arrested and detained, or kept under arrest, if already arrested.³ If the defendant become subsequently known and do not appear after notice, the property to which the cause relates cannot be sold in execution until notice of the judgment has been served on the owner.⁴

Judgments and orders are registered with the Registrar of County Court Judgments in London, and must be duly transmitted to him by the registrar of the county court.⁵ Registration of judgments. The Act of 1858 provides for the remuneration of the registrar,⁶ and defines his powers.⁷

The costs allowed and court fees charged in Admiralty Causes. causes in the county courts depend upon the Act of 1868⁸ and the County Court Rules, 1875.⁹ In salvage cases, under the Merchant Shipping Acts, they depend upon a table framed in pursuance of the Merchant Shipping Act, 1862.¹⁰ In default of any special direction by the judge, the costs abide the event.¹¹ In actions *in rem*, where the amount claimed does not exceed 20*l.*, the costs are allowed

¹ County Court Rules, 1875, Ord. xxxiii. rr. 23-28, 37.

² 31 & 32 Vict. c. 71, s. 23. See above for transfer.

³ 31 & 32 Vict. c. 71, s. 22; County Court Rules, 1875, Ord. xxxiii. r. 23.

⁴ R. 24.

⁵ 31 & 32 Vict., c. 71, s. 24; County Court Rules, 1875, Ord. xxxvii. r. 51.

⁶ 31 & 32 Vict. c. 71, s. 17.

⁷ Ss. 19, 20.

⁸ 31 & 32 Vict. c. 71, s. 18.

⁹ County Court Rules, 1875; Scale of Costs; Treasury Order of Oct. 26, 1875, Sched. (B), Part IV.

¹⁰ 25 & 26 Vict. c. 63, s. 69.

¹¹ 9 & 10 Vict. c. 95, s. 88, applied to the county court in its Admiralty jurisdiction by 31 & 32 Vict. c. 71, s. 34. As to exercise of this discretion, where the defence of compulsory pilotage is set up without notice to the plaintiff, see County Court Rules, 1875, Ord. xxxiii. r. 32.

Taxation of costs. on the scale in actions above 20*l.*, unless the judge is of opinion that proceedings *in rem* ought not to have been taken, and otherwise orders.¹ The rules relating to taxation of costs contained in the rules under the Act of 1868² have been superseded, and no others substituted by the County Court Rules, 1875.³

Forms. The forms to be used in Admiralty proceedings in the county courts depend upon the County Court Rules, 1875.⁴

SECTION II.

The City of London Court.

Since 1867, a county court. Since the County Courts Act, 1867, the City of London Court has been practically a county court. The rules and orders in force for the time being for regulating the practice of and costs in the county courts, and forms and proceedings therein, are in force in the City of London Court, to the exclusion of any rules and orders in force in that court at the time of the passing of the County Courts Acts, 1867.⁵ The City of London Court, therefore, possesses the Admiralty jurisdiction of a county court, and all the law relating to the Admiralty jurisdiction of the county courts applies equally to this court.⁶

Its local limits. The jurisdiction of the City of London Court extends to the districts of the County Court of Essex, holden at Rochford, Brentwood, and Romford; the County Court of Kent, holden at Dartford, Gravesend, Greenwich, and

¹ County Court Rules, 1875, Ord. xxxvi. r. 16.

² Rr. 62-67.

³ See the table in the County Court Rules, 1875, contrasting the old and new County Court Rules. As to unnecessary expenses, see *The Rio Lima*, 4 L. R. Ad. 167; 43 L. J. Ad. 4.

⁴ See County Court Rules, 1875, Forms 243-261.

⁵ 30 & 31 Vict. c. 142, s. 35.

⁶ *The Cargo ex Argos*, p. 68, was an appeal from the City of London Court.

Woolwich; the Southwark County Court of Surrey; the Bow and Whitechapel County Courts of Middlesex; and the City of London Court.¹ No judge, except the judge of the City of London Court, has Admiralty jurisdiction in the City of London.²

Judgments are registered in the same manner as judgments of the county courts.³

Registration
of
judgments.

SECTION III.

The Court of Passage at Liverpool.

This is an inferior Court,⁴ possessing a very ancient jurisdiction over causes of action arising within the Borough of Liverpool.⁵ Jurisdiction in Admiralty was first conferred upon it by the County Courts Admiralty Jurisdiction Act, 1868, which gives it the jurisdiction, powers, and authorities of the County Court of Lancashire, holden at Liverpool, as defined by Order in Council.⁶ The area of its jurisdiction is not extended by the Act of 1868, nor is it in any way taken away or restricted.⁷ The effect of the County Courts Admiralty Jurisdiction Act, 1868, and the Amendment Act, 1869, is to give jurisdiction to the Court in all cases where either the property to which the cause relates is within the jurisdiction, or where the owner of the property resides within the jurisdiction.⁸ The

¹ Order in Council of Jan. 14, 1869.

² 31 & 32 Vict. c. 71, s. 2.

³ 31 & 32 Vict. c. 71, s. 24; County Court Rules, 1875, Ord. xxxvii. r. 51.

⁴ *Laughton v. Taylor*, 6 M. & W. 695; 10 L. J. N. S. Ex. 57.

⁵ Russell's Practice of the Court of Passage, p. 14.

⁶ Order of Jan. 14, 1869. The local limits of the Admiralty jurisdiction of the Liverpool County Court, as defined by that Order, are the districts of the County Court of Cheshire, holden at Birkenhead and Runcorn, and the County Court of Lancashire, holden at Warrington, St. Helens, Liverpool, and Ormskirk.

⁷ 31 & 32 Vict. c. 71, s. 25.

⁸ 31 & 32 Vict. c. 71, s. 21.

law relating to the Admiralty jurisdiction of the county courts applies, as in the case of the City of London Court, equally to this court.¹

Rules of
practice.

Rules of practice were framed under the powers of the County Courts Admiralty Jurisdiction Act, 1868.² These rules must now be read, subject to the rules framed after the Judicature Acts came into operation. By the last rules the practice of the Court of Passage is to be, *mutatis mutandis*, the same as that of the High Court.³

Costs.

Costs depend upon the scale framed in pursuance of the County Courts Admiralty Jurisdiction Act, 1868.⁴

SECTION IV.

Justices of the Peace.

Their
jurisdiction.

The Admiralty jurisdiction of justices of the peace is confined to cases of damage, salvage, and wages.

Under the
Harbours
Clauses
Act, 1847.

The earliest jurisdiction was that given by the Harbours Clauses Act, 1847, by which two justices have jurisdiction to determine claims in respect of injury done by any vessel or float of timber to a harbour, dock, pier, or quay, where the amount claimed for damage does not exceed 50*l.*, and to cause the offending vessel to be distrained⁵ and kept until the amount of damages and costs awarded by them has been paid.⁶

¹ *The Dove*, *The Nuova Raffaelina*, and *The Alexandria*, *supra*, were Court of Passage cases.

² 31 & 32 Vict. c. 71, ss. 25, 35, confirmed by 32 & 33 Vict. c. 6; General Orders of Feb. 8, 1869. See Appendix.

³ Rules of Dec. 22, 1876.

⁴ General Orders of Feb. 8, 1869, Sched. I. The Rules of Dec. 22, 1876, do not contain any provision superseding or altering this scale.

⁵ It seems that a distress cannot be levied while the ship is under arrest of the High Court: *The Westmoreland*, 4 Notes of Cases, 173 (a case of distress for wages, under 17 & 18 Vict. c. 104, ss. 188, 189).

⁶ 10 & 11 Vict. c. 27, ss. 74, 75; *Wear Commissioners v. Adamson*, 1 Q. B. D. 546; affirmed in House of Lords, W. N. 1877, p. 195.

Disputes as to amount of salvage arising in the United Kingdom¹ (except within the Cinque Ports) are to be referred to the arbitration of any two justices or a stipendiary magistrate, if the sum claimed² does not exceed 200*l.* In case of wreck they must be resident at or near the place where such wreck is found; in case of services rendered to any ship or boat, or to the persons, cargo, or apparel belonging thereto, resident at or near the first port or place in the United Kingdom into which such ship or boat is brought after the occurrence of the accident, by reason whereof the claim to salvage arises.³ If the sum exceeds 200*l.*, the justices can only have jurisdiction by consent. Their jurisdiction up to 200*l.* is protected by the proviso by which, if a sum not greater than 200*l.* is recovered in a Superior Court, the successful party is deprived of costs, unless the Court certifies that the case is a fit one to be tried in the Superior Court.⁴

So exclusive is their jurisdiction up to 200*l.*, that an action cannot be brought in a Common Law Court for distribution of salvage;⁵ and the High Court has jurisdiction to condemn in damages and costs plaintiffs who arrest and detain a vessel in respect of which a claim might have been proceeded with before justices.⁶ In order that the

¹ *The Actif*, 3 Jur. N. S. 893.

² The words "sum claimed" mean the sum claimed by the salvor before any legal proceedings are taken: *The William and John*, B. & L. 49; 32 L. J. Ad. 102; *The Andrew Wilson*, B. & L. 56; 32 L. J. Adm. 104.

³ Timber moored in a river and drifted to sea in consequence of accidental loosening of the fastenings is not wreck within the meaning of ss. 458, 460: *Palmer v. Rouse*, 3 H. & N. 505; 27 L. J. Ex. 437.

⁴ 17 & 18 Vict. c. 104, s. 460. The intention of s. 460 is, that ordinary cases of salvage under 200*l.* should not be brought before the High Court: *The Fenix*, Swa. 13; *The Leda*, 2 Jur. N. S. 119. See *The Actif*, *supra*. The provisions of 17 & 18 Vict. c. 104, as to life salvage, are extended by 24 Vict. c. 10, s. 9; and 25 & 26 Vict. c. 63, s. 59.

⁵ *Atkinson v. Woodhall*, 1 H. & C. 170; *sup. nom. Atkinson v. Bell*, 31 L. J. M. C. 174.

⁶ But the Court will not do so unless the circumstances show *mala fides* or *crassa negligentia*: *The Eleonore*, B. & L. 185; 33 L. J.

Court may not do so, the arrest must have been made under the *bond fide* belief that the High Court had jurisdiction.

The justices may decide either by themselves or with the assistance of an assessor,¹ or may refer the matter to a skilled umpire. Unless the time be specially extended by them, the award must be made within forty-eight hours of the reference of the dispute to them, or within forty-eight hours of the appointment of an umpire.² The costs of the arbitration, including the fees to the assessor or umpire,³ are divided between the parties at the discretion of the umpire.⁴ The justices and the umpire have full powers to call for documents and to administer oaths.⁵

Under the
Merchant
Shipping
Act, 1862.

The Merchant Shipping Amendment Act, 1862, has considerably extended the provisions of the Act of 1854. It enacts: (1) that the provisions of the Act of 1854 are to extend to all cases in which the value of the property saved⁶ does not exceed 1000*l.*; (2) that the provisions are to apply whether the salvage service has been rendered within the limits of the United Kingdom or not;⁷ (3) that a rota of justices for salvage cases may be appointed; (4) that when no such rota is appointed, the salvors may name one justice, and the owners of the property saved the other; (5) that if neither party names a justice within a reasonable time, the case may be tried by two or more justices at petty sessions; (6) that a stipendiary magistrate, county court judge, &c., may exercise the jurisdiction in salvage given to two justices.⁸

Ad. 19; *The Kata*, B. & L. 218; 33 L. J. Ad. 122. Both these cases arose under 25 & 26 Vict. c. 63, s. 49. See *infra*, but the principle is the same.

¹ This assessor differs in position and in the scope of his duties from the assessor allowed in cases of shipping casualties.

² 17 & 18 Vict. c. 104, s. 461.

³ S. 462.

⁴ S. 463.

⁵ S. 464.

⁶ This means the value of the property when first brought into a place of safety: *The Stella*, 1 L. R. Ad. 340; 36 L. J. Ad. 13.

⁷ See *The Actif*, p. 77, for the law under the Act of 1854.

⁸ 25 & 26 Vict. c. 63, s. 49.

The receiver of wreck for the district may, by consent, appoint a valuer, whose valuation, duly signed and attested, is evidence in any subsequent proceeding in respect of the property saved.¹

Salvage not exceeding 200*l.* may be paid by the party liable to the receiver of wreck for the district,² who is to distribute it among those entitled;³ if the sum exceeds 200*l.*, the High Court apportions it.⁴

A sum ordered to be paid by justices or a stipendiary magistrate is leviable by distress of the ship, her tackle, furniture, and apparel.⁵

A master, seaman, or apprentice, or any person duly authorized on his behalf,⁶ can sue for wages in a summary manner before two justices or a stipendiary magistrate,⁷ where the amount due does not exceed 50*l.*; and every order made in the matter is final.⁸ Deductions may be made for costs rightfully incurred in procuring the conviction of the seaman for any offence,⁹ and any question concerning forfeiture of wages may be decided in a proceeding for wages.¹⁰ No proceeding for the recovery of wages under 50*l.*¹¹ is to be instituted in a Superior Court, unless either the owner of the ship is bankrupt, or the ship is under arrest, or sold by the authority of such Court, or the

¹ S. 50. The not obtaining a valuation from the receiver under this section was held not to amount to *crassa negligentia*, so as to render defendants liable to be condemned in damages and costs: *The Kate*, p. 78.

² 17 & 18 Vict. c. 104, s. 466.

³ S. 467.

⁴ S. 468.

⁵ S. 523.

⁶ These words seem to meet the difficulty caused by the last statute, 7 & 8 Vict. c. 112, upon the construction of which it was held that a justice had no jurisdiction to adjudicate upon a claim for wages by the administrator of a deceased seaman: *Hollingsworth v. Palmer*, 4 Ex. 267; 18 L. J. Ex. 409.

⁷ 17 & 18 Vict. c. 104, s. 519.

⁸ Ss. 188, 191.

⁹ S. 251.

¹⁰ S. 254.

¹¹ Whether this applies to a claim for wages earned on a foreign ship, *quære*: *Burns v. Chapman*, 5 C. B. N. S. 481; 28 L. J. C. P. 6.

which he resides, or from which his usual place of residence is not distant more than a mile.¹

Local limits of the jurisdiction. Jurisdiction in salvage always preserved. Concurrent jurisdiction of High Court and Admiralty Court of the Cinque Ports. No limit of amount.

The jurisdiction extends from Seaford to Faversham, taking in parts of the coast of Sussex, Kent, and Essex.²

The jurisdiction of the Cinque Ports in cases of salvage is especially preserved by later statutes,³ though the provisions as to wreck and pilotage have been altered.⁴

The High Court, and the Court of Admiralty of the Cinque Ports,⁵ have concurrent jurisdiction with the commissioners.⁶

No limit of amount is named in any of the Acts relating to the commissioners.

SECTION VI.

The Royal Courts of Jersey and Guernsey.

Their authority.

The authority of these Courts depends upon charters and letters patent, orders in Council, local ordinances, and Acts of the Imperial Parliament.⁷ The Royal Court of

¹ S. 3. By 9 Geo. IV. c. 37, s. 1, the power of appointing these commissioners may also be exercised by a deputy-warden, or by the Lieutenant of Dover Castle.

² S. 18.

³ 17 & 18 Vict. c. 104, s. 460; 17 & 18 Vict. c. 120, Sched.; 18 & 19 Vict. c. 48, s. 10.

⁴ 17 & 18 Vict. c. 120, Sched.; Maude and Pollock, *Merch. Ship.*, p. 510 (wreck); 16 & 17 Vict. c. 129; 17 & 18 Vict. c. 104, s. 370 (pilotage).

⁵ The full title of the judge of this Court is "The Judge Official and Commissary of the Court of Admiralty of the Cinque Ports," 1 & 2 Geo. IV. c. 76, s. 15.

⁶ *The Maria Luisa*, Swab. 67; 2 Jur. N. S. 264. This concurrent jurisdiction is not affected by the Merchant Shipping Act, 1862 (25 & 26 Vict. c. 63): *The Jeune Paul*, 4 L. R. Ad. 336; 16 L. T. N. S. 125; see *The Antelope*, 4 L. R. Ad. 33; 27 L. T. N. S. 663.

⁷ See "Remarques sur l'Approbation des Lois de Guernesey," by Le Marchant, vol. ii., pp. 227, 316; Le Quesne's "Constitutional History of Jersey;" Report of the Royal Commission on the Laws of Jersey (1861), Pritch. Adm. Dig. 307; Montesquieu, "Esprit des Lois," Book xxviii. s. 42; *Re the Bailiffs and Jurats of the Royal Court of Guernsey*, 5 Moo. P. C. 49; *Re the Jersey Jurats*, L. R. 1 P. C. 94; 3 Moo. P. C. N. S. 456; also *Le Birton v. Ennis*, 4 Moo. P. C. 323.

Jersey seems to have jurisdiction by immemorial usage for six miles beyond low water mark. The jurisdiction of the Royal Court of Jersey also extends over certain small islands, dependencies of Jersey (the whole being called "the bailiwick of Jersey"), and that of the Royal Court of Guernsey over Alderney, Sark, and two other islands ("the bailiwick of Guernsey").¹

The practice in the Royal Court of Jersey is said to differ widely from that of Guernsey.² The practice in both depends, in the first instance, upon the Great Customary of Normandy. It is difficult, if not impossible, to obtain a correct view of the law and procedure of these Courts, owing to the want of reports and law books of authority in the island³ and of Admiralty cases on appeal to the Privy Council. It seems, however, that the Royal Courts sit as a "Cour en Amirauté," with general commercial rather than Admiralty jurisdiction,⁴ and as an appellate Court from the "nombre inférieur."⁵

These Courts must, upon application, aid and assist the High Court of Admiralty to enforce bonds given in the Vice-Admiralty Courts in case of salvage by a Queen's ship.⁶

Jurisdiction under Merchant Shipping Act, 1854.

¹ Report of Royal Commission, No. 1604-1615.

² "The Channel Islands," by Amsted and Latham, ch. xxiii.

³ The only case which bears upon the Admiralty jurisdiction of the Courts is *The Nora Creina*, July 1862 (Royal Court of Jersey), Pritch. Adm. Dig. 308, from which it appears that when a ship is arrested in an Admiralty suit in the Royal Court the ship is detained until the suit is concluded, and that it is not the practice to release the ship on bail, and the Court will not do so without the consent of all parties. See Report of Royal Commission, p. iii., for the want of reports.

⁴ Amsted and Latham, ch. xxiii.

⁵ Report of Royal Commission, p. liii.

⁶ 17 & 18 Vict. c. 104, ss. 486-494. For the existence of the Admiralty jurisdiction of these Courts, see further Report of Royal Commission, No. 1000, 1033, 1950 (for Jersey); *Le Marchant's "Remarques,"* &c., vol. ii., p. 277; "Nous n'avons point de Court d'Amirauté, autre que la Cour Royale" (for Guernsey).

SECTION VII.

The Admiralty Court of the Isle of Man.

- Its jurisdiction.** This Court, which is presided over by the water bailiff of the island, possesses a jurisdiction depending partly upon immemorial custom, partly upon statute. The jurisdiction is both *in personam* and *in rem*, and is almost identical with that of the High Court in England. The matters in which the jurisdiction is most frequently exercised are the settlement of accounts between the owners, masters, and seamen engaged in the herring fishery, and summary convictions for offences committed upon the herring fleet.
- By custom.**
- By statute.** By the Merchant Shipping Act, 1854, the Court is to aid in enforcing bonds given in a Vice-Admiralty Court in the case of salvage services rendered by a Queen's ship.¹
- Practice.** The proceedings are usually of a summary nature. There are no written pleadings. The plaintiff serves the defendant with a short statement of his claim, with a writ from the water bailiff, under which the defendant is bound to attend. Proceedings may also be instituted by petition. The defence of the defendant is in either case usually stated orally in Court. In certain cases trial by a jury of seafaring men is allowed; but the jury trial, though still allowed, is practically extinct in this Court.²

SECTION VIII.

The Vice-Admiralty Courts.

- In what places they are established.** These are Courts which have Admiralty jurisdiction in the British Colonies and possessions.³ In one case, that

¹ 17 & 18 Vict. c. 104, ss. 484-93. The same power is exercisable by the Royal Courts of the Channel Islands.

² These facts were kindly furnished by Sir James Gill, Attorney-General of the Isle of Man.

³ A list of these Courts is found in the Schedule to 26 & 27 Vict. c. 24. The Straits Settlements have been added by 30 & 31 Vict.

of the Supreme and Provincial Consular Courts of the Ottoman Empire, Vice-Admiralty jurisdiction is exercised by Courts beyond the limits of British territory.¹ They are not Courts of Record.² Their powers before recent legislation depended on charters from the Crown. The practice and jurisdiction differed considerably in the different Courts, according to the powers given in the charters.³ The authority of the Vice-Admiralty Courts was looked upon jealously by the Common Law Courts of England, and was not recognized where a decree had been made illegal by the English law, as where it confirmed a sale of ship or cargo by the captain where the case was not one of necessity, even though for the benefit of all concerned.⁴ The powers of these Courts are now strictly defined by statute.

Not courts
of record.

Their
powers
before
recent
legislation.

Their
statutory
powers.

Under the
Merchant
Shipping
Act, 1854.

In case of salvage services being rendered by a Queen's ship abroad, the property alleged to be salvaged, is, if the salvor is justified in detaining it, to be taken into a port where there is a consular officer or Vice-Admiralty Court. On the master's executing a bond in the form prescribed,⁵ and, if the owners be foreigners, procuring proper security as well, the property is to be released, and the bond transmitted to the High Court for that Court to adjudicate upon. If the salvor and master agree that a Vice-Admiralty Court shall adjudicate, such Court has jurisdiction. In the latter case, the Vice-Admiralty Court

c. 45, s. 17. For the mode of constituting them see Pritch. Adm. Dig. 1063.

For the Admiralty and Vice-Admiralty jurisdiction of the High Court of Bengal, see Broughton's Civil Procedure Code (4th ed.) pp. 377, 397, 719, and the cases there cited, for Madras, p. 358, for Bombay, p. 360.

¹ Under 6 & 7 Vict. c. 94, s. 1, and the Order in Council of Jan. 9, 1863.

² *Smith v. Nichols*, 7 Scott, 147; 5 Bing. N. C. 208; 7 Dowl. 282, per Tindal, C. J.

³ See *The Elizabeth*, 1 Hagg. 226.

⁴ *Reid v. Darby*, 10 East 143; *Hunter v. Prinsep*, 10 East 378; *Hunter v. Parker*, 7 M. & W. 322; *The Segredo*, 1 Eccl. & Adm. Rep. 57.

⁵ 17 & 18 Vict. c. 104, Sched., Table W.

has all the powers of the High Court. Unless the salvor proceeds under this Act, he has no power to detain the property.¹ If the salvor agrees to abandon his lien, upon the master entering into a written agreement to abide the decision of the High Court or a Vice-Admiralty Court, and giving due security, the agreement may be adjudicated upon and enforced in the same manner as the bond above mentioned, and the agreement is to be transmitted to the High Court in the same manner as a bond. This provision applies to salvage services rendered by any ship, whether a Queen's ship or not.²

Under the
Vice-Ad-
miralty
Courts
Act, 1863.

The matters in which jurisdiction has been conferred upon these Courts by the Vice-Admiralty Court Act, 1863, are claims :

- (1) For seamen's wages ;³
- (2) For master's wages and disbursements ;⁴
- (3) In respect of pilotage ;
- (4) In respect of salvage of life or goods ;
- (5) In respect of towage ;
- (6) In respect of bottomry or respondentia bonds ;
- (7) In respect of mortgage where the ship has been sold by a decree of the Vice-Admiralty Court, and the proceeds are under its control ;
- (8) Between the owners of a ship registered in the possession in which the Court is established

¹ 17 & 18 Vict. c. 104, ss. 486-494.

² S. 497.

³ Apart from any enabling statute, a Vice-Admiralty Court seems to have no more extended jurisdiction than the High Court over policies of assurance, charter parties, &c. Forsyth; *Cases and Opinions*, p. 94. (Opinion of Sir Christopher Robinson, Q. A.).

⁴ For wages, see also 17 & 18 Vict. c. 104, ss. 189-191. Under s. 191 the master has a lien for wages in the Vice-Admiralty Court, whatever may be the municipal law of the colony: *The Rajah of Cochín*, Swab. 472.

A suit for wages under 50*l.* cannot be maintained in the Vice-Admiralty Court by s. 189 of 17 & 18 Vict. c. 104 ; but the Act of 1863 contains no such limitation.

touching ownership, possession, employment, or earnings;

- (9) For necessities supplied in the possession in which the Court is established, where no owner or part-owner is domiciled within the possession at the time of the necessities being supplied;
- (10) In respect of building, equipping, or repairing (with similar restrictions as to domicile).¹

They have also jurisdiction in cases of breach of the Navy regulations and of Admiralty droits.²

Unless expressly confined by the Act, jurisdiction may be exercised where the cause or right of action has arisen beyond the limits of the jurisdiction.³

The High Court has concurrent jurisdiction with the Vice-Admiralty Courts.⁴

The Supreme Consular Court of Constantinople and the Provincial Consular Courts have the authority of Vice-Admiralty Courts.⁵ The Supreme Court has jurisdiction in the Ottoman dominions, the Provincial Courts only within its own district.⁶ The jurisdiction of the Supreme Court is both *in rem* and *in personam*.⁷

Statutory provision is made for the appointment of Officers of

¹ 26 & 27 Vict. c. 24, s. 10.

² S. 11.

³ S. 12. It has also jurisdiction in revenue cases, &c. ; 26 & 27 Vict. c. 24, s. 13 ; 36 & 37 Vict. c. 85, s. 5 ; see *The Hercules*, 2 Dods. 353 ; *The Elizabeth*, 1 Hagg. 226.

⁴ 30 & 31 Vict. c. 45, s. 16.

⁵ 6 & 7 Vict. c. 94, s. 1. Order in Council of Jan. 9, 1863. For the jurisdiction before the Order and Council and the Vice-Admiralty Courts Act, 1863, see *The Laconia*, 2 Moo. P. C. N. S. 161 ; 33 L. J. Adm. 11 ; B. & L. 117 ; *Hamilton v. Aquilina*, 2 L. T. N. S. 90 ; *The Patriotto v. The Rival*, 2 L. T. N. S. 301.

The existence of a Vice-Admiralty Court within the territorial limits of an independent State is an allowed exception to General International Law. See the judgment of Lord Stowell in *The Madonna del Burso*, 4 C. Rob. 172 (1804).

⁶ Order of Jan. 9, 1863, No. 36.

⁷ *The Laconia*, *supra*.

a Vice-Admiralty Court. judge, deputy-judge, registrar, and marshal of a Vice-Admiralty Court.¹

Practice. The practice is at present governed by the rules framed in pursuance of the repealed statute 2 Will. IV., c. 51.²

The proceedings as nearly as possible should follow the practice of the High Court in England, thus the form of preliminary acts should be the same.³

Security for costs. Security for costs may be required to be given in a Vice-Admiralty Court, or in default the claim may be dismissed.⁴

Taxation of costs. If a party is dissatisfied with the taxation of costs in a Vice-Admiralty Court, it may be reviewed by the High Court.⁵

¹ 26 & 27 Vict. c. 24, ss. 3-8; 30 & 31 Vict. c. 45, ss. 4-14.

See *Rolet v. Reg.* L. R. 1 P. C. 198; 4 Moo. P. C. N. S. 41; for sufficiency of evidence of due appointment of a deputy-judge.

The Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 23, declares that the Judicature Acts, 1873 and 1875, made no difference in the power of the Admiralty to appoint judges and officers of Vice-Admiralty Courts.

² And an Order in Council of June 27, 1832 (Rules and Regulations for the Admiralty Courts abroad). 2 Will. IV. c. 51 was repealed by 26 & 27 Vict. 24, Sched. B., but the repeal does not affect the rules framed under the repealed stat. 26 & 27 Vict. c. 24, s. 24; they remain until altered by the powers given in s. 14 of the latter Act. Powers are given by 26 & 27 Vict. c. 24 to frame new and alter existing rules.

Proceedings against a vessel must be made under these rules, and not according to the rules of the Civil Law: *Guimaraens v. Preston*, 4 Moo. P. C. 167; 6 Jur. 879.

Proctors may proceed in a Vice-Admiralty Court without exhibition of a proxy till it is called for by the Court. As to proxies generally, see *post*, Pt. II., O. vii.

³ *The Norma*, 34 L. T. N. S. 418; and see also *The Inca*, Swa. 370.

⁴ *George v. Reg.*, 1 L. R. P. C. 389; 4 Moo. P. C. N. S. 287. As to the transmission of the proceeds of sale from a Vice-Admiralty Court to the registry of the High Court for security, see *The Lady Banks*, 1 Hagg. Adm. 306.

⁵ 26 & 27 Vict. c. 24, s. 22.

SECTION IX.

Appeals to the Privy Council.

To this Court an appeal lies from the decisions of

(a) The Royal Courts of Jersey and Guernsey;¹

(b) The Isle of Man Court;

(c) The Vice-Admiralty Courts;

(d) The Admiralty Court of the Cinque Ports;²

(a) Appeals from the Royal Courts are either appeals from (a) proper or doléances, the latter being appeals or remonstrances in which the conduct of the Court below is complained of.³ the Royal Courts.

1. The
Judicial
Commit-
tee.

Where the ground of appeal is not the misconduct of the Court below, an appeal and not a doléance is the proper remedy.⁴ In all appeals from these islands, the respondents are to be summoned by the proper officer of the islands, to appear and answer the said appeals within forty days from the time of being so summoned.⁵ Where the Royal Court has refused to allow an appeal, a notice should be given to that Court after application to the Privy Council for leave to appeal, that the Court may be heard at the hearing in objection to such appeal.⁶

No appeal from the Royal Court of Jersey is allowed, unless the value of the subject-matter⁷ be £80 per annum.⁸

¹ 3 & 4 Will. IV. c. 41, s. 1.

² For the origin of appeals to the King in Council, see Clark's Colonial Law, pp. 106-121.

³ Report of Royal Commission of 1861, p. liv.

⁴ *Re Ames*, 3 Moo. P. C. 409; see *Re Whitfield*, 2 Moo. P. C. 269; 5 Moo. P. C. 157.

⁵ Order in Council of July 15, 1835. Macpherson Privy Council Practice, 224.

⁶ *Belson v. Belson*, 7 Moo. P. C. 30, dissenting from the note to *Tupper's Case*, 2 Knapp P. C. 201.

⁷ The values above given are those necessary where the subject-matter of the case is personal property. There is no special rule as to appealable value where the appeal is from the Royal Court as an Admiralty Court.

⁸ Order in Council of July 15, 1835. Macph. P. C. Prac. App. 103.

In Guernsey the appealable value is £200, and the appeal must be brought within six months from the date of the judgment complained of.¹

(b) the
Isle of
Man
Court.

(b) From the Court presided over by the water bailiff an appeal lies, in the first instance, either to the Court of Common Law of the Island, or to the Court called the Staff of Government. From the decision of the bailiff alone it lies to the latter, from the verdict of a jury to the Court of Common Law.² But jury trial in the Admiralty Court is practically obsolete.³

From the Staff of Government an appeal lies to the Judicial Committee,⁴ provided that it be brought within six months from the date of the judgment appealed from.⁵ There is no fixed amount below which an appeal cannot be brought.⁶

(c) the
Vice-
Admiralty
Courts.
Under the
Vice-
Admiralty
Courts
Act, 1863.

(c) Appeals from the Vice-Admiralty Courts⁷ were transferred from the High Court of Admiralty to the Judicial Committee in 1833,⁸ and they are now regulated by the Vice-Admiralty Courts Act, 1863.⁹ No appeal is to be allowed, save by permission of the judge, from Act, 1863. any decree or order not having the force of a definitive

¹ Order in Council of May 13, 1835. Macph. P. C. Prac. App. 101.

It is too late for a respondent at the hearing to take objection to the competency of the appeal on the ground that the prescribed appealable value was not involved, such objection not having been taken in his case. The proper course is for the respondent to move to dismiss the appeal on that ground. Aldridge v. Cato, 4 L. R. P. C. 313.

² Before 1866 the appeal in such a case lay to the House of Keys. In that year the appellate jurisdiction of the House of Keys was abolished.

³ See p. 84.

⁴ It was held early in the last century to lie to the King in Council: Christian v. Corren, 1 P. Wms. 329.

⁵ Act of Tynwald of Aug. 11, 1736. Macph. P. C. Prac. App. 106.

⁶ Macph. P. C. Prac., *ubi supra*.

⁷ For the general right of appeal from a Vice-Admiralty Court before the Act of 1833, see Forsyth, Cases and Opinions, p. 377.

⁸ 3 & 4 Will. IV., c. 41, s. 2.

⁹ 26 & 27 Vict. c. 24.

sentence or final order.¹ The appeal from any decree or order must be brought within six months from the date of the decree; ^{Within what time appeal is to be brought.} ^{Enforce-} the petition of appeal must be entered with the registrar of ecclesiastical and maritime appeals within the proper time. ^{ment of decrees.}

The Appellate Court has power conferred upon it to enforce its decrees and punish contempt.³

If the judge of a Vice-Admiralty Court, from which an appeal is brought, has disregarded an inhibition forbidding him to proceed further in the case, a citation is issued by the Court against him, calling on him to answer articles touching his contempt, and followed by monition and attachment in case of disobedience.⁴ The judge must not disregard the inhibition, although he may consider that he is acting for the benefit of all parties.⁵

The rule as to appealable value apparently varies in the different Courts. No appeal lies for costs only.⁶ As to appeal on the facts, the Judicial Committee have refused to lay down any exclusive rule, but they are most reluctant to come to a conclusion different from that of the Court below, merely upon a balance of testimony.⁷ In appeals from Vice-Admiralty Courts, the Appellate Court en- ^{Appeal-able value. Appeal for costs. Appeal on facts}

¹ 26 & 27 Vict. c. 24, s. 22. A party denying the right of his opponent to appeal should appear under protest, and not absolutely: *Macph. P. C. Prac.* 204.

² The Judicial Committee may nevertheless at their discretion admit an appeal, notwithstanding that six months have elapsed: *Casanova v. Reg.*, L. R. 1 P. C. 115; 3 Moo. P. C. N. S. 484; 36 L. J. P. C. 3. *Reg. v. Diaz*, 6 Moo. P. C. 102, and subject to a counter-petition to dismiss the appeal. The provisions as to the time for appealing apply to foreigners as well as British subjects: *Lopez v. Burslem*, 4 Moo. P. C. 300. See also *Logan v. Burslem*, 4 Moo. P. C. 284; 7 Jur. 1.

³ 3 & 4 Will. IV. c. 41, ss. 21, 28; 6 & 7 Vict. c. 38, ss. 7-9; 7 & 8 Vict. c. 69, s. 12; *Lapraik v. Burrows*, 13 Moo. P. C. 132.

⁴ *Barton v. Reg.*, 2 Moo. P. C. 19; *Martin v. Mackonochie*, 7 Moo. P. C. N. S. 254; *Macph. P. C. Prac.* 219.

⁵ *Barton v. Field*, 4 Moo. P. C. 273.

⁶ *The Orient*, L. R. 3 P. C. 696; 8 Moo. P. C. N. S. 74 (appeal from High Court); *Wilson v. Reg.*, 1 L. R. P. C. 405; 4 Moo. P. C. N. S. 307 (appeal from Vice-Admiralty Court).

⁷ *The Alice*, L. R. 2 P. C. 245 (see Pt. II., O. lviii., note).

Appeal from salvage award. deavours to find out the real merits of the question, without requiring that rules of practice should be strictly conformed to.¹ In appeals as to amount of salvage, the Judicial Committee, like the High Court, is reluctant to review cases of salvage decided in Vice-Admiralty Courts, but will, if the justice of the case requires it, increase the amount.²

Admission of further evidence. Further evidence is admissible upon the appeal, but it can only be adduced after leave is given.³

Jurisdiction of Appellate Court. The Judicial Committee, on an appeal from a Vice-Admiralty Court, has not more extended jurisdiction than the Court of first instance.⁴

Cause remitted or retained. After a decision has been given upon the appeal, the cause may be either remitted or retained, or the cause may be remitted, but the taxation and enforcement of costs retained.⁵

Costs and damages. The successful party will, as a rule, be entitled to the costs of appeal.⁶ But costs may be disallowed at the discretion of the Court, if there is good reason for so doing.⁷ The costs must be asked for at the hearing.⁸ Taxation of costs is allowed, as in the other Superior Courts.⁹ Damages and costs below, as well as the

¹ *The Sally*, 2 C. Rob. 229; *Le Louis*, 2 Dods. 239.

² *The Scindia*, 1 L. R. P. C. 241; 4 Moo. P. C. N. S. 84; 35 L. J. P. C. 53.

³ *Guimaraens v. Preston*, 4 Moo. P. C. 167; 6 Jur. 879; *Hocguard v. Reg.*, 11 Moo. P. C. 155. In *The Scindia*, *supra* (leave was refused).

⁴ *The John*, 2 Hagg. Adm. 305 (in the Court of Admiralty before the Act of 1833).

⁵ Macph. P. C. Prac. 206. The remitter may be allowed to proceed with the case, to transmit evidence, or to decide upon evidence, Macph. P. C. Prac. 142, 144. In *The Slave Grace*, 2 Hagg. 134, Lord Stowell remitted a case affirmed on appeal back to a Vice-Admiralty Court that costs and damages might be decreed.

⁶ Order in Council of June 13, 1853. Macph. P. C. Prac. 255; App. 56.

⁷ Macph. P. C. Prac. 256.

⁸ Macph. P. C. Prac. 161.

⁹ The costs are taxed by the registrar of the High Court (Admiralty Division) in his capacity of Registrar of Ecclesiastical and Maritime cases, 6 & 7 Vict. c. 38, s. 12.

costs of appeal, may be awarded to a successful appellant.¹

The practice depends upon the rules framed in pursuance of 6 & 7 Vict., c. 38,² and affirmed by order in Council. The forms to be used are contained in a Schedule to the Order.³

The scale of fees depends upon an Order in Council framed in 1842.⁴

(d) Appeals to the Judicial Committee are prosecuted from the Admiralty Court of the Cinque Ports.⁵ The Committee will not interfere with salvage awards by that Court, unless clearly erroneous.⁶

Rules of
practice.

(d) the
Admiralty
Court of
the Cinque
Ports.

SECTION X.

Appeals to the High Court of Justice.

To the Admiralty Division of the High Court an appeal lies from the decisions of—

2. The
High
Court of
Justice.

- (a) The County Courts,
- (b) The City of London Court,
- (c) The Court of Passage,
- (d) Justices of the Peace,
- (e) The Commissioners within the Cinque Ports.⁷

¹ Rolet v. Reg., 1 L. R. P. C. 198 ; 4 Moo. P. C. N. S. 41 ; Casanovo v. Reg., 1 L. R. P. C. 268 ; 4 Moo. P. C. N. S. 121 ; 36 L. J. P. C. 3.

² See the mode of procedure in a maritime appeal set out in Pritch. Adm. Dig. Appendix, *ad fin.*

³ Order of Dec. 11, 1865.

⁴ Orders of 10 & 11 Aug., 1842.

⁵ Itself a Court of Appeal from the Commissioners. See *post*.

⁶ *The Clarisse*, 12 Moo. P. C. 340 ; Swab. 129. See on the whole subject of this section Pt. II., O. lviii, Appeals.

⁷ 36 & 37 Vict. c. 66, s. 34. Admiralty Appeals from Inferior Courts are, by special exception in Ord. lviii., r. 19, of the Rules of the Supreme Court, 1875, to be assigned to the judge of the Admiralty Division, until further order.

from (a) (a) An appeal from a County Court may be brought
the County before the High Court, either by instrument of appeal or
Courts. by motion.¹

Appeal If by the former, the instrument of appeal must be
under lodged in the registry of the High Court within ten days
County of the date of the decree or order appealed from, but
Courts the judge of the Admiralty Division² may allow an
Admiralty appeal to be prosecuted after that time has elapsed on
Jurisdic- sufficient cause being shown.³ No appeal is allowed where
tion Act, the parties have agreed that the decision of the County
1868. Court shall be final,⁴ or where the amount decreed or
ordered to be due does not exceed 50l.⁵ The appeal lies as
of right from a final decree or order, and by permission
of the County Court judge from any interlocutory decree
or order.⁶ Security for costs of the appeal must be given
in the County Court before lodging the instrument of
Costs. appeal in the registry of the High Court.⁷ The costs of
appeal are to be paid by the appellant, if unsuccessful,
unless the Appellate Court otherwise directs.⁸

¹ No rules to regulate the practice on appeal under the County Courts Admiralty Jurisdiction Act, 1868, were framed. But by rule 77 of the General Orders of 1868 the rules, orders, practice and forms in actions in the County Courts were to be, subject to those Orders, adopted with reference to Admiralty suits, so far as applicable. This rule has been repealed by the County Court Rules, 1875 (see the table comparing the old and new County Court Rules), and it is therefore most probable that Ord. xxix. of the Rules of 1875, relating to appeals from County Courts by special case, has no application to appeals from County Courts as Courts of Admiralty.

² Since the Judicature Acts, 1873 and 1875, an application for leave to appeal is rightly made to the judge of the Admiralty Division sitting as a judge of the High Court of Justice: *The Two Brothers*, 1 L. R. Ad. 52; 45 L. J. Adm. 47.

³ 31 & 32 Vict. c. 71, s. 27. There is no appeal from this decision: *The Amstel*, 2 L. R. Ad. D. 186.

⁴ S. 28.

⁵ S. 31. This section does not apply to an appeal by a plaintiff whose suit has been dismissed: *The Doctor van Tunen Tellow*, 17 W. R. 899.

⁶ *The Elizabeth*, 3 L. R. Ad. 33; 39 L. J. Adm. 53.

⁷ 31 & 32 Vict. c. 71, s. 28. *The Forest Queen*, 3 L. R. Ad. 299, 40 L. J. Adm. 17; *The Two Brothers*, 1 L. R. Ad. D. 52, note (1), *ad fin.*

⁸ 31 & 32 Vict. c. 71, s. 30. Security for costs must be given in the County Court, not in the High Court. *The Forest Queen*, 3 L. R. Ad. 299; 40 L. J. Ad. 17.

In an appeal by motion, the motion must be made in the Admiralty Division¹ within eight days of the ruling, order, direction, or decision of the County Court judge. It is *ex parte* in the first instance. If the High Court be not sitting, the motion may be made before a judge of the Supreme Court in Chambers. A copy of the notes of the County Court judge is to be used and received on the motion and on the hearing of the appeal,² and the judge should, when informed of the appeal, give his reasons in writing for his decision.³ The County Court Rules as to appeal by special case do not apply to appeal by motion.⁴ On an appeal from a suit *in rem* in a County Court, which is dismissed, plaintiffs are entitled to a warrant from the High Court to rearrest the ship.⁵ The High Court may, under very exceptional circumstances, order witnesses to be examined *vivâ voce* at the hearing of a County Court Appeal,⁶ but only those who were examined in the Court below will usually be examined on the appeal, or may receive new evidence.⁷ On an appeal by motion, the appeal may be on facts.⁸ Appeal by motion lies in all cases, whether leave to appeal is necessary or not.⁹

Appeal
under
County
Courts
Act, 1875.

Notes of
county
court
judge.

Evidence.

¹ For an example of such an appeal by motion, see *The Glanibanta*, 2 L. R. Ad. D. 45 ; 36 L. T. 27.

² 38 & 39 Vict. c. 50, s. 6. Before this Act it was held that whenever an appeal was probable, notes of the evidence given in the County Court should be taken by a reporter duly appointed: *The Busy Bee*, 3 L. R. Ad. 527 ; 26 L. T. N. S. 590 ; General Orders under Act of 1868, r. 32. But this rule is repealed and not re-enacted by the County Court Rules, 1875.

³ *The Rathwaite Hall*, *infra*.

⁴ County Court Rules, 1875, Ord. xxix., r. 12. If there is a difference between the notes of the County Court judge and those of the short hand writer the Court will rely on the former: *The Rathwaite Hall*, 32 L. T. N. S. 841.

⁵ *The Miriam*, 43 L. J. Adm. 35 ; 30 L. T. N. S. 537. *The Friar*, 32 L. T. N. S. 572 ; 44 L. J. Ad. 49.

⁶ *The Busy Bee*, *supra*.

⁷ *The O. S. Butler*, 4 L. R. Ad. 238 ; 43 L. J. Adm. 17. *The Moorsley*, 29 L. T. N. S. 663 (on ground of surprise).

⁸ For appeal upon facts in the Probate, Divorce and Admiralty Division, see *Sugden v. Lord St. Leonards*, 1 P. D. 154 ; 45 L. J. Prob. 49.

⁹ *Turner v. G. W. R. Co.*, 2 Q. B. D. 125 ; 46 L. J. Q. B. 226.

(d) Jus-
tices of the
Peace.
Salvage.

(d) An appeal from a salvage award by justices lies to the Admiralty Division of the High Court, provided that (1) the sum in dispute¹ exceeds £50;² (2) the appellant within ten days after the date of the award gives notice to the justices of his intention to appeal;³ (3) the appellant takes such proceeding, as according to the practice of the Court of Appeal is necessary for the institution of the appeal within twenty days from the date of the award.⁴ The justices are to transmit to the proper officer of the Court of Appeal a certified copy of the proceedings⁵ before them or their umpire, if any, and of the award made by them or him, together with a certificate of the gross value⁶ of the article respecting which salvage is claimed, such copy and certificate to be admitted as evidence in the Court of Appeal.⁷ The valuation may be made by a valuer appointed by the receiver of wreck for the district,

Proceed-
ings on
appeal
from jus-
tices.

(b) the
City of
London
Court,
(c) the
Court of
Passage.

Appeals from the City of London Court and the Court of Passage are governed by the same practice as from County Courts. The provisions of 30 & 31 Vict. 142, s. 35, seem sufficiently wide to include prospectively the appeal by motion under 38 & 39 Vict. c. 50, s. 6: *The Douse*, 3 L. R. Ad. 135; 39 L. J. Adm. 46. It may be a question how far 38 & 39 Vict. c. 50, s. 6, applies to an appeal for the Court of Passage. The words of the County Courts Act, 1867, with regard to the City of London Court, are more decisive than those of the County Courts Admiralty Jurisdiction Act, 1868, with regard to the Court of Passage. Any doubt upon the subject may be set at rest by an order in Council, under the powers given in 38 & 39 Vict. c. 77, s. 15.

¹ *The Andrew Wilson*, Br. & L. 56; 32 L. J. Adm. 104.

² *The Mary Anne*, Br. & L. 334; 34 L. J. Adm. 73; 17 & 18 Vict. c. 104, s. 464, and 25 & 26 Vict. c. 63, s. 49, when read together do not make the appeal depend on the claim being for £50 and upwards, and the value of the property saved £1000 and upwards; an appeal lies though the value of the property is under £1000: *The Generous*, 2 L. R. Ad. 57; 37 L. J. Adm. 37.

³ Verbal notice to the clerk of the justices is not sufficient: *The Industry*, 2 Hagg. Adm. 73 (decided previous to 17 & 18 Vict. c. 104).

⁴ 17 & 18 Vict. c. 104, s. 464.

⁵ If necessary it seems that the High Court may grant a monition to the justices commanding them to transmit the proceedings.

⁶ On the appeal, the justices' certificate of value, if not conclusive, is of great weight: *The Brothers*, 2 Hagg. Adm. 195. Semble, that since 25 & 26 Vict. c. 63, s. 50, the certificate of the receiver would be of equal weight.

⁷ 17 & 18 Vict. c. 104, s. 465.

and such valuation is receivable in evidence.¹ The receiver of wreck has power to sell property salvaged in certain cases if an appeal be not prosecuted within twenty days after a sum for salvage has become due, and to pay the salvage to the persons to whom it is due, and the surplus after payment of expenses and salvage to the persons entitled to it.²

On an appeal from an award of justices the burthen of proof lies upon the appellant,³ and the High Court is reluctant to disturb the award, especially in cases of small amount, as it relies to some extent on the local skill of the justices. The Court, however, will overrule the award when it is wholly inadequate,⁴ or has proceeded on a wrong principle.⁵ But the Court will not interfere simply because the apportionment is in some degree objectionable, the award being for a trifling sum.⁶

New evidence may be admitted on the appeal, but usually only as to matters which have arisen since the case was before the justices (*noviter perventa*), and with a liability to pay costs if it be introduced without sufficient cause.⁷

Where there are two sets of salvors, and the first makes a claim summarily before justices, the second, if cognizant of the claim, ought to intervene, and the hearing of an appeal will not be postponed until the case of the second salvors is ready for adjudication.⁸

Where the judgment of justices awarding salvage is reversed in part on appeal by the owners, the High Court will not generally give costs.⁹ In appeals by salvors or

¹ 25 & 25 Vict. c. 63, s. 50.

² 17 & 18 Vict. c. 104, s. 489.

³ *The Cuba*, Lush. 15; 6 Jur. N. S. 152.

⁴ *The Henry of Philadelphia*, 1 Hagg. 264; *The Messenger*, Swab. 191; *The Harriet*, Swab. 219; *The Cuba*, *supra*.

⁵ *The General Palmer*, 2 Hagg. 323.

⁶ *The Vesta*, 2 Hagg. 192.

⁷ *The General Palmer*, *supra*; *The Thomas Wood*, 1 W. Rob. 18; *The Generous*, *supra*.

⁸ *The Eugene*, 3 Hagg. 156.

⁹ *The David Luckie*, 9 "Monthly Law Mag." (Notes of Cases), 212; *The Thomas and William*, 10 *ib.* 215; Pritch. Adm. Dig. 107 n.

owners, the High Court allows or disallows costs at its discretion.¹

(e) the
Cinque
Ports
Commis-
sioners.

(e) An appeal lies from an award of Cinque Ports Commissioners to the High Court,² concurrently with the Admiralty Court of the Cinque Ports: the practice on the appeal is the same in both courts. The party dissatisfied with the Commissioners' award must, within eight days after the award, declare to the Commissioners whether he intends to proceed in the High Court or in the Cinque Ports Court, and he must proceed in the Court chosen within twenty days from the date of the award by taking out a monition against the opposite party. Bail must be given in double the sum awarded.³ No ulterior appeal can be prosecuted.⁴ The mode of appeal is by rehearing.⁵

New evi-
dence.

New evidence may be adduced without the restrictions imposed in the case of appeals from County Courts and justices, the rule as to the exclusion of all but *noviter perventa* not applying to the rehearing of an award of the Commissioners.⁶

Objection
to jurisdic-
tion.

An objection to the jurisdiction of the Commissioners must be taken before them, and will not be allowed to be taken on the appeal, after the appellants have been allowed to exhibit further proofs on the express ground of non-compliance with the provisions of the Cinque Ports Act.⁷

Costs and
damages.

If an appeal by salvors from an award of the Commissioners be entered, and the vessel arrested, but the appeal be subsequently abandoned, the salvors may be condemned in all costs and damages caused by the latter proceedings.⁸

¹ *The Oscar*, 2 Hagg. 257; *The Vesta*, 2 Hagg. 292; *The Osiris*, 2 Hagg. Adm. 135; *The William Beckford*, 3 C. Rob. 357.

² 1 & 2 Geo. IV. c. 76, s. 4.

³ S. 4.

⁴ S. 5.

⁵ *The Caledonia*, 4 L. R. Ad. 11; 42 L. J. Adm. 13. As to tender on appeal, see *post*, Part II., O. xxx.

⁶ *The Caledonia*, *supra*.

⁷ *The David Luckie*, 9 "Monthly Law Mag." (Notes of Cases), 209; Pritch. Adm. Dig. 618; *The Elise*, Swa. 436.

⁸ *The Gloria de Maria*, Swab. 106.

Costs of appeal are in the discretion of the Appellate Court, as in the case of an appeal from justices.¹

Costs of
appeal.

SECTION XI.

Appeals to the Admiralty Court of the Cinque Ports.

To this Court an Appeal lies from—

(a) County Courts within the Cinque Ports.

(b) The Commissioners within the Cinque Ports.

The
Admiralty
Court of
the Cinque
Ports.

The jurisdiction of this Court within its local limits² seems to be as extensive as that of the High Court.³ It is not mentioned in the recent enactments extending the jurisdiction of the High Court.⁴ The proceedings in the Court are not carried on by formal pleadings, the case being decided upon the facts disclosed in the affidavits of the parties.⁵ The Merchant Shipping⁶ and County Courts Acts⁷ have always preserved the jurisdiction of this Court as a Court of concurrent jurisdiction with the High Court, on appeals within the Cinque Ports.

(a) In case of an appeal from a County Court within the Cinque Ports, it lies either to the High Court or to this Court.⁸ If it be brought in the latter, the instrument of appeal must be lodged in the registry of the Admiralty Court of the Cinque Ports.⁹

from (a)
County
Courts.

¹ See *The David Luckie, The Thomas and William, The Henry of Philadelphia, The Oscar*, pp. 98, 99, all which cases seem equally applicable to justices and Cinque Ports Commissioners.

² For which see 1 & 2 Geo. IV. c. 76, s. 18.

³ *The Lord Warden v. The King in his Office of Admiralty*, 2 Hagg. 438.

⁴ 3 & 4 Vict. c. 65; 24 Vict. c. 10.

⁵ *The Clarisse*, 12 Moo. P. C. 340; Swab. 129.

⁶ 17 & 18 Vict. c. 104, s. 460; see 18 & 19 Vict. c. 48, s. 10.

⁷ 31 & 32 Vict. c. 71, s. 33.

⁸ *Ib.*

⁹ *Ib.*

Transfer. A transfer of a County Court case within the Cinque Ports may be made to this Court instead of to the High Court.¹

(b) Com-
missioners. (b) From a salvage award of the Commissioners within the Cinque Ports an appeal lies to either the High Court or this Court, at the option of the parties.² The practice on the appeal is the same, in whichever Court the appeal is brought.³

¹ S. 8.

² 1 & 2 Geo. IV. c. 76, s. 4.

³ Ss. 4, 5.

PART II.

THE PRACTICE OF THE COURT.

RULES OF COURT.

[Note.—Where no other provision is made by the Act or these Rules the present procedure and practice remain in force.]*

ORDER I.

FORM AND COMMENCEMENT OF ACTION.

1. All suits which have hitherto been commenced by a cause *in rem* or *in personam* in the High Court of Admiralty, shall be instituted in the High Court of Justice by a proceeding to be called an action.¹

In an action *in rem* the property in relation to which the claim has arisen, or the proceeds thereof when in Court are proceeded against, and are available to satisfy the claim if established. In an action *in personam* a certain per-

Actions in rem and in personam.

¹ The following is the practice as to claims in respect of substitutes for seamen who have volunteered into the royal navy, under M. S. A. 1854, s. 214—220:

By A. C. R. 1859—

R. 131. A solicitor desiring to obtain repayment under the provisions of the Merchant Shipping Act, 1854, of the excess of wages paid to a substitute hired in the place of a seaman volunteering into the royal navy, shall file a claim, form of which may be obtained in the registry.

R. 132. If the claim be correct, he shall, on providing the proper stamp, receive a certificate for payment of the sum due.

R. 133. If the claim be incorrect, he shall, on providing the proper stamp, receive the registrar's opinion in writing.

R. 134. If the solicitor be dissatisfied with the opinion of the registrar, he may apply to the judge on motion to review the same, as prescribed by the Merchant Shipping Act, 1854.

* The former Admiralty Rules, which are still in force, are inserted among the following rules, and particularized by the letters "A. C. R., 1859." Only those of the new rules which touch upon Admiralty actions are inserted in the following pages.

son, as in an ordinary action, is proceeded against, and there is no special object or fund to satisfy the claim. The action *in rem* is peculiar to the Admiralty Division of the High Court of Justice, for though the jurisdiction formerly vested in the Court of Admiralty has been transferred to the High Court of Justice (J. A. 1873, s. 16), yet all causes and matters over which the Court of Admiralty would formerly have had exclusive cognisance have been transferred to the Admiralty Division (J. A. 1873, s. 34, sub-s. 2 (e); *Humphreys v. Edwards*, 45 L. J. Ch. 112). The action when it is once commenced either *in rem* or *in personam* must continue in the form in which it is begun, and cannot be changed (*The Hope*, 1 W. Rob. 154). If there is a *lis alibi pendens* in respect of a cause of action begun in this country, the Court will order proceedings here to be stayed if the *lis alibi pendens* is continued (*The Catterina Chiazzare*, 1 L. R. Ad. D. 368; 44 L. J. Ad. 105).

3. All other proceedings in and applications to the High Court may, subject to these rules, be taken and made in the same manner as they would have been taken and made in any court in which any proceeding or application of the like kind could have been taken or made if the Act had not been passed.

3a. Forms 2 and 3 in Part I. of Appendix (A) to the rules of the Supreme Court (see App. IV.) shall be read as if the words by leave of the Court or judge were not therein.

By this rule the proceedings by petition under protest to the jurisdiction and by petition in objection to the report of the registrar are preserved.

ORDER II.

WRIT OF SUMMONS AND PROCEDURE.

Indorse-
ments on
its of
summons.

1. Every action in the High Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action,

and which shall specify the division of the High Court to which it is intended that the action should be assigned.

2. Any costs occasioned by the use of any more prolix or other forms of writs and of indorsements thereon, than the forms hereinafter prescribed, shall be borne by the party using the same, unless the Court shall otherwise direct.

In an action *in rem*, if the statement on the writ differs from that in the affidavit to obtain the arrest of the ship, the Court will allow the writ to be amended on application, and the plaintiffs will pay the costs of the application (*The Princess Royal*, 3 L. R. Ad. 27; 39 L. J. Ad. 29). If the amount claimed on the writ proves during the subsequent proceedings to be too small, the Court will enlarge the amount—if a too small sum was set down through a *bond fide* mistake—on the application of the plaintiffs, who will pay the costs of such application, but it is doubtful if the bail will also be increased; and see *post*, O. xxvii., r. 11 (*The Johannes*, 3 L. R. Ad. 127; 39 L. J. Ad. 41). The amount indorsed on the writ should be such as may reasonably be expected to cover the amount of the claim and the costs of the proceedings (*The Earl Grey*, 1 Spk. 180). But if the costs are not covered by the amount indorsed on the writ, the Court will order execution, or a writ of arrest against property to issue to satisfy the balance if good reason can be shown for this somewhat unusual course (*The Temiscouta*, 2 Spk. 208; *The Freedom*, 25 L. T. N. S. 392; 3 L. R. Ad. 495; and see *post*, note to O. iii., r. 11).

3. The writ of summons for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in Form No. 1, in Part I. of Appendix (A) hereto, with such variations as circumstances may require. ^{Form of writ.}

See App. IV.

This rule is only applicable to the case of an action *in personam*. As to actions *in rem*, *post*, r. 7. Actions in

respect of damage by Queen's ships are usually brought against the commander *in personam*. (*The Athol*, 1 W. Rob. 374.)

Service of writ out of jurisdiction. 4. No writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of a court or judge.

5. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in Form No. 2, in Part I. of Appendix (A) hereto, with such variations as circumstances may require. Such notice shall be in Form No. 3 in the same part, with such variations as circumstances may require.

See App. IV.

A writ of summons will not be allowed to be served out of the jurisdiction unless the cause of action has arisen within the territorial jurisdiction of the High Court (*In re The City of Mecca*, 45 L. J. Ad. 92; 1 L. R. P. D. 300; *The Vivar*, 2 L. R. P. D. 29; 35 L. T. N. S. 782). That jurisdiction is generally considered to be low-water mark (*Harris v. The owners of The Franconia*, 2 L. R. C. P. D. 173; 46 L. J. N. S. C. P. 363; *R. v. Keyn*, 2 L. R. Ex. D. 63; 45 L. J. C. P. 586). As to the manner of obtaining such a writ or notice, see *post*, O. xi., r. 1a.

Writ of summons in rem. 7. The writ of summons in every Admiralty action *in rem* shall be in Form No. 4, of Part I. of Appendix (A) hereto, with such variations as circumstances may require.

7a. Form A. in the Appendix to these Rules shall be substituted for the form referred to in Order II., Rule 7, of "The Rules of the Supreme Court."

See *post*, App. IV.

Date of writs. 8. Every writ of summons and also every other writ shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chancellor, or if the office of Lord Chancellor shall be vacant, in the name of the Lord Chief Justice of England.

ORDER III.

INDORSEMENTS OF CLAIM.¹

1. The indorsement of claim shall be made on every writ of Indorse-
summons before it is issued. ments of
claim.

2. In the indorsement required by Order II., Rule 1, it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled. The plaintiff may by leave of the Court or judge amend such indorsement so as to extend it to any other cause of action or any additional remedy or relief.

3. The indorsement of claim may be to the effect of such of the Forms in Part II. of Appendix (A) hereto as shall be applicable to the case, or if none be found applicable then such other similarly concise form as the nature of the case may require.

For these additional forms, see *post*. Appendix IV.

4. If the plaintiff sues, or the defendant or any of the defendants Indorse-
is sued, in a representative capacity, the indorsement shall show, in ment of
manner appearing by the statement in Appendix (A) hereto, Part capacity.
II., section 8, or by any other statement to the like effect, in what
capacity the plaintiff or defendant sues or is sued.

See App. IV.

7. Wherever the plaintiff's claim is for a debt or liquidated demand Indorse-
only, the indorsement, besides stating the nature of the claim, shall ment of
state the amount claimed for debt, or in respect of such demand, debt.
and for costs respectively, and shall further state, that upon payment
thereof within four days after service, or in case of a writ not for

¹ The special indorsements under r. 6 of this Order, and the consequences thereof being only applicable to a cause *in personam* for a debt or liquidated demand arising in a contract express or implied—as in a wages suit against the owner of a vessel—and being so unusual in the Admiralty Division, since such actions would, as a rule, be brought in one of the other divisions, it has been thought unnecessary to take up space by inserting O. iii., r. 6, O. xiii., r. 3, O. xiv., rr. 1a, 2, 3, 4, 5 and 6, or the cases which have been decided thereon, as they are scarcely connected with the practice of the Admiralty Division.

service within the jurisdiction within the time allowed for appearance, further proceedings will be stayed. Such statement may be in the form in Appendix (A) hereto, Part II., section 3.¹ The defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation.

Accounts. 8. In all cases of ordinary account, as, for instance, in the case of a partnership or executorship or ordinary trust account, where the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be indorsed with a claim that such account be taken.

Rule 8 applies in actions of co-ownership and mortgage wherein accounts are to be taken.

ORDER IV.

INDORSEMENT OF ADDRESS.

Indorsement of address.

1. The solicitor of a plaintiff suing by a solicitor shall indorse upon every writ of summons and notice in lieu of service of a writ of summons the address of the plaintiff, and also his own name or firm and place of business, and also, if his place of business shall be more than three miles from Temple Bar, another proper place, to be called his address for service, which shall not be more than three miles from Temple Bar, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him. And where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

When plaintiff sues in person.

2. A plaintiff suing in person shall indorse upon every writ of summons and notice in lieu of service of a writ of summons his place of residence and occupation, and also, if his place of residence shall be more than three miles from Temple Bar, another proper place, to be called his address for service, which shall not be more than three miles from Temple Bar, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left with him.

¹ See App. IV.

[The above two Rules are to apply to all cases in which the writ of summons is issued out of the London office, or out of a district registry where the defendant has the option of entering an appearance either in the district registry or the London office.]

As to the formation of district registries, see J. A. 1873, ss. 60, 61 and 62; and J. A. 1875, s. 13. As to proceedings therein, see O. xxxv., *post*. These two rules only apply where the writ of summons is issued from the London office, O. iv., r. ii., Feb. 1876.

3. In all cases where a writ of summons is issued out of a district registry the solicitor shall give on the writ the address of the plaintiff, and his own name or firm and his place of business, which shall, if his place of business be within the district of the registry, be an address for service, and if such place be not within the district, he shall add an address for service within the district, and where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from Temple Bar; and where the solicitor issuing the writ is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor. Where the plaintiff sues in person, he shall give on the writ his place of residence and occupation, which shall, if his place of residence be within the district, be an address for service, and if such place be not within the district, he shall add an address for service within the district, and where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from Temple Bar.

The address on writs.

ORDER V.

ISSUE OF WRITS OF SUMMONS.

1. *Place of Issue.*

1. In any action other than a Probate action, the plaintiff wherever resident may issue a writ of summons out of the registry of any district.

2. In all cases where a defendant neither resides nor carries on

business within the district out of the registry whereof a writ of summons is issued, there shall be a statement on the face of the writ of summons that such defendant may cause an appearance to be entered at his option either at the district registry of the London office, or a statement to the like effect.

The London office is the Admiralty Registry, Somerset House, W.C.

When defendant is within district registry.

3. In all cases where a defendant resides or carries on business within the district, and a writ of summons is issued out of the district registry, there shall be a statement on the face of the writ of summons that the defendant do cause an appearance to be entered at the district registry, or to the like effect.

2. *Option to choose Division in certain Cases.*

Choice of division.

4. Subject to the power of transfer, every person by whom any cause or matter may be commenced in the High Court of Justice which would have been within the non-exclusive cognizance of the High Court of Admiralty if the said Act had not passed, shall assign such cause or matter to any one of the divisions of the said High Court, including the Probate, Divorce, and Admiralty Division, as he may think fit, by marking the document by which the same is commenced with the name of the division, and giving notice thereof to the proper officer of the Court.

This rule allows actions over which the Court of Admiralty and the Common Law Courts had concurrent jurisdiction to be tried either in the Admiralty or any other division. See also J. A. 1875, s. 11, sub-s. 3. Thus in an action for loss of life by collision at sea, unless the plaintiff wished that the action should be *in rem*, and that it should be tried by a judge alone without a jury, he would set it down for some other than the Admiralty Division.

The "proper officer of the Court" is the Admiralty Registrar or one of his clerks.

3. *Generally.*

By whom prepared.

5. Writs of summons shall be prepared by the plaintiff or his solicitor, and shall be written or printed, or partly written and partly printed, on paper of the same description as hereby directed to be printed.

See O. lvi., r. 2, as to paper, which is to be cream wove machine drawing foolscap folio paper, 19 lbs. per mill ream.

6. Every writ of summons shall be sealed by the proper officer, Sealing. and shall thereupon be deemed to be issued.

The officer is the Registrar or one of his clerks.

7. The plaintiff or his solicitor shall, on presenting any writ of Copy of summons for sealing, leave with the officer a copy, written or printed, ^{writ.} or partly written and partly printed, on paper of the description aforesaid, of such writ, and all the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person.

8. The officer receiving such copy shall file the same, and an entry Filing. of the filing thereof shall be made in a book to be called the Cause Book, which is to be kept in the manner in which Cause Books have heretofore been kept by the Clerks of Records and Writs in the Court of Chancery, and the action shall be distinguished by the date of the year, a letter, and a number, in the manner in which causes are now distinguished in such last-mentioned Cause Books, and when such action shall be commenced in a district registry, it shall be further distinguished by the name of such registry.

9. Notice to the proper officer of the assignment of an action to Notice. any division of the Court under section 11 of the Supreme Court of Judicature Act, 1875, or under Rule 4 of this Order, shall be sufficiently given by leaving with him the copy of the writ of summons.

11. "In Admiralty actions *in rem* a warrant for the arrest of property The war- according to the Form A. in the Appendix to these Rules may be ^{rant for} issued at the instance either of the plaintiff or of the defendant at ^{arrest.} any time after the writ of summons has issued, but no warrant of arrest shall be issued until an affidavit by the party or his agent has been filed, and the following provisions complied with."

(a) The affidavit shall state the name and description of the party Affidavit on whose behalf the action is instituted, the nature of the claim, the ^{to lead the} name and nature of the property to be arrested, and that the claim ^{warrant.} has not been satisfied.

(b) In an action of wages the affidavit shall state the national character of the vessel proceeded against; and if against a foreign vessel, that notice of the institution of the action has been given to the Consul of the State to which the vessel belongs, if there be one resident in London [*a copy of the notice shall be annexed to the affidavit*].

(c) In an action of bottomry, the bottomry bond, and if in a foreign language also a notarial translation thereof, shall be produced for the inspection and perusal of the Registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit.

(d) In an action of distribution of salvage the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name, address, and description of the party holding the same.

(e) The Court or Judge may in any case, if he think fit, allow the writ of summons to issue although the affidavit may not contain all the required particulars. In a wages cause he may also waive the service of the notice, and in a cause of bottomry the production of the bond.

A præcipe, bearing a five shilling stamp (for form see App. IV.), must also be filed with this affidavit, according to the practice in the Admiralty Registry. The old practice, therefore, as regards actions *in rem* supplemented by the new writ of summons *in rem*, may be said still to prevail, accordingly r. 8 of A. C. R. 1859 may still be considered partially to be in force. "If the cause is *in rem* the solicitor may, on filing a præcipe and an affidavit, take out a warrant for the arrest of the property proceeded against." For Forms of these affidavits, see App. V. The ships of the Crown are not liable to arrest. When such a vessel is to be proceeded against the registrar will inform the Lords of the Admiralty of the fact, and the Admiralty Proctor will then enter an appearance (*The Athol*, 1 W. Rob. 374)¹; and passengers' wearing apparel on board a ship is free from arrest (*The Willem III.*, 3 L. R. 487; 25 L. T. N. S. 356).

Damages
for arrest.

If an arrest is made in bad faith, or with gross negligence, or if it be continued longer than is necessary, the owner of the vessel is entitled to ask the Court for damages in respect of such arrest (*The Volant*, Br. & L. 321; *The Cheshire Witch*, *ib.* 362; 11 L. T. N. S. 350; *The Evan-*

¹ This is strictly the practice; but now generally the *Plaintiff's Solicitor* gives notice to the *Admiralty Proctor*.

gelismos, Swa. 378; *The Margaret Jane*, 2 L. R. Ad. 345; 38 L. J. Ad. 38).

Should a party be desirous of preventing the arrest of property, he must proceed to act under A. C. R. 1859, r. 55 *et seq.*, which are as follows:—

55. A party desiring to prevent the arrest of any property may cause a caveat against the issue of a warrant for the arrest thereof to be entered in the registry. Caveat
against the
issuing of
a warrant.

56. For this purpose he shall cause to be filed in the registry a præcipe, signed by himself or his solicitor, undertaking to enter an appearance in any cause that may be instituted against the said property, and to give bail in such cause in a sum not exceeding an amount to be stated in the præcipe, or to pay such sum into the registry; and a caveat against the issue of a warrant for the arrest of the property shall thereupon be entered in a book to be kept in the registry, called the "Caveat Warrant Book."

57. A solicitor, instituting a cause against any property in respect of which a caveat has been entered in the "Caveat Warrant Book," shall, before filing the præcipe to lead the institution of the cause, serve a copy thereof upon the party on whose behalf the caveat has been entered, or upon his solicitor.

58. Within three days from the filing of the præcipe, the party on whose behalf the caveat has been entered shall, if the sum in which the cause is instituted does not exceed the amount for which he has undertaken, give bail in such sum, or pay the same into the registry.

59. After the expiration of twelve days from the filing of the præcipe, if the party on whose behalf the caveat has been entered shall not have given bail in such sum, or paid the same into the registry, the plaintiff's solicitor may proceed with the cause by default, and on filing his proofs in the registry may have the cause placed on the list for hearing.

60. If, when the cause comes before the judge, he is satisfied that the claim is well founded, he may pronounce for the amount which appears to him to be due, and may enforce the payment thereof by monition and attachment against the party on whose behalf the caveat has been entered, and by the arrest of the property, if it then be or thereafter come within the jurisdiction of the Court.

61. The preceding rules shall not prevent a solicitor from taking out a warrant for the arrest of any property, notwithstanding the entry of a caveat in the "Caveat Warrant Book;" but the party at whose instance any property, in respect of which a caveat is entered, shall be arrested, shall be liable to be condemned in costs

and damages, unless he shall show, to the satisfaction of the judge, good and sufficient reason for having so done.

These rules apply to counter-claims as well as to original actions. As to proceedings by default, O. xiii. & O. xxix.

Bail.

In addition to giving bail or paying money into Court when a caveat is entered against the issue of a warrant, it is also usual for a defendant who appears in an action at an early stage of the proceedings if the *res* has been arrested, to give bail or pay money into Court, so as to obtain the release of the property.

Bail is the substitution of personal security for that of the *res* (*The Duchesse de Brabant*, Swa. 264), and consequently when the *res* is released, it cannot usually be arrested again in the same action, or for the same cause of action (*The Kalamazoo*, 15 Jur. 885). As a general rule bail is required to the amount of the claim, though, if that exceeds the full value of the property, whether ship, cargo, or freight, it must be given in such sum—that is to say, the value at the time of the arrest¹ (*The St. Olaf*, 2 L. R. Ad. 360; 38 L. J. Ad. 41). If the amount of the costs, with or without damages, exceeds the sum for which bail has been given, the Court will order the re-arrest of the ship for the satisfaction of such costs (*The Freedom*, 3 L. R. Ad. 495; 41 L. J. Ad. 1).

And if the bail equals the full value of the ship, then the Court will consider the owners personally liable for the costs incurred (*The Temiscouta*, 2 Spk. 208). It is doubtful, however, if the Court will order the re-arrest of a ship for a balance of damages over and above the sum in which bail has been given. It certainly will not when bail has been given to the full value of the ship, and the very principles of giving bail which allow personal security to take the place of the *res* to the amount of the claim are against permitting such re-arrest (see *The Volant*, 1 W. Rob. 385; *The Temiscouta*, 2 Spk. 208).

¹ Vessels are often released in actions of damage, when bail is given to the amount of the statutory liability upon an affidavit as to tonnage and non-privity of owners. See ante, p. 84.

If the amount of bail given before the property is valued proves to be too great when the worth of such property is ascertained, it will be reduced to a proper sum upon application to the Court (*The Duchesse de Brabant*, Swa. 264; *The Chieftain*, 32 L. J. Ad. 106; 8 L. T. N. S. 120; *The Staffordshire*, 4 L. R. P. C. 194; 41 L. J. Ad. 49; also as to bail, see A. C. Act, 1861, s. 33).

Bail in respect of a counterclaim by a defendant as well as in an action by a plaintiff can be claimed; and when the counterclaim is *in personam*, the proceedings by the plaintiff will be stayed till security is given by him (24 Vict. c. 10, s. 34; *The Charkieh*, 42 L. J. Ad. 70; 29 L. T. N. S. 404).

The value of the property proceeded against may be fixed by the parties themselves, or the plaintiff may require it to be appraised by the marshal or his substitutes.

In order to obtain an official appraisement application must be made to the judge in Court by motion, or in chambers by summons, for an order for a commission of appraisement, which will be delivered to the solicitor at the registry (London or district) after a præcipe has been filed.

Official
appraise-
ment.

The commission, which will be shortly after issued, directs the marshal to reduce into writing an inventory of the property, to choose proper persons to appraise the property according to its value, and then to have a certificate of such value reduced into writing signed by himself and the appraiser, and filed in the registry (London or district), together with the commission. An official appraisement is conclusive of the value of the property (*The Cargo ex Venus*, 1 L. R. Ad. 50; 14 W. R. 460).

If it is necessary to unload the cargo, a commission of unloading should be applied for at the same time as the commission of appraisement in order to save the expense of twice paying the same fees.

The appraisement and unloading must be performed by the marshal (A. C. R., 1859, r. 124). "Every commission for the appraisement of property under the decree of the

Court shall, unless the judge shall otherwise order, be executed by the marshal or his substitutes."

When obtained, the commission, together with a præcipe for the execution of the commission, should be left at the marshal's office, and the acts mentioned in the commission will then be performed.

Where persons insist on an official appraisement, though the owners of the property have given in its fair value, they will have to bear the costs of the appraisement (*The Commodore*, 1 Spk. 175*n*). If there is a substantial difference between the two valuations, the plaintiffs will be entitled to the costs of the valuation (*The Paul*, 1 L. R. Ad. 57; 35 L. J. Ad. 16).

Bail may be given either (I) in the registry (II) before a standing or special commissioner.

Bail given
in the
registry.

I. A. C. R., 1859, r. 39. "If bail is to be given in the registry, the solicitor shall, on filing in the marshal's office a præcipe, receive a notice of bail, a copy of which shall be served on the adverse solicitor." The præcipe is obtained at the registry. For form see App. IV.

A. C. R., 1859, r. 40. "After the expiration of twenty-four hours from the time when the notice of bail shall have been so served, if the marshal has reported as to the sufficiency of the sureties, the solicitor shall be entitled to take up the marshal's report. He shall then file in the registry a præcipe with the notice of bail and the marshal's report, and shall be informed at what hour the sureties may attend." Two sureties are the ordinary number, but they must not be partners (*The Corner*, Br. & Lush. 161; 33 L. J. Ad. 17). If there is an objection to the sureties it must be taken at once before the judge, but the marshal's report is seldom overruled, and when an objection is wrongly made it will be dismissed with costs.

A. C. R., 1859, r. 41. "The bail bond shall be signed by the sureties, and shall be taken either before the registrar, or by the registrar's directions, before one of the clerks in the registry." For form see App. IV. Where sureties are resident

in the same town but cannot attend at the registry, a clerk will be sent to their residence, but a special fee of 1*l*. is then charged. The above directions apply to district registries (J. A., 1873, s. 64; O. xxxv., r. 1*a*).

II. Bail before a commissioner may be taken before a ^{Bail before a commis-} special commissioner, or before a standing commissioner. ^{sioner.} Standing commissioners are permanently appointed in various parts. A. C. R., 1859, r. 42. "Bail may be taken under a special commission, or before standing commissioners to be appointed by the judge; but in every such case the sureties shall justify." To justify is to make an affidavit that the surety is worth more than the sum in which bail is to be given after the payment of all his debts. No report from the marshal is required. To obtain such commission a præcipe for a commission to take bail must be handed in to the registry; the documents will then be prepared and should then be forwarded to the commissioner. A. C. R., 1859, r. 43. "A bail bond taken before a commissioner appointed under a special or a standing commission shall not be filed in the registry until after the expiration of twenty-four hours from the time when a notice containing the names and addresses of the sureties and of the commissioner before whom the bail was taken shall have been served upon the adverse solicitor; and a copy of the notice verified by affidavit shall be filed with the bail bond." The defendant's solicitor must take care that after this notice the documents are filed. With the exception of obtaining a special commission the proceedings before a standing commissioner are the same; but by A. C. R., 1859, r. 44, "A commissioner appointed under a special or standing commission shall not take bail on behalf of any person for whom he or any person in partnership with him is acting as proctor, attorney, solicitor, or agent;" and by r. 45, "The delays required by the preceding rules in regard to the taking of bail may be dispensed with by the consent of the solicitors in the cause."

Payment
into Court
to obtain
release of
arrested
property.

By A. C. R., 1859, r. 48, "A solicitor may obtain the release of any property by paying into the registry the sum in which the cause has been instituted." And by A. C. R., 1859, r. 49, "Cargo arrested for the freight only may be released by filing an affidavit as to the value of the freight, and by paying the amount of the freight into the registry." And by A. C. R., 1859, r. 127, "All monies shall be paid to the account of the registrar of the Admiralty Division, at the Bank of England, upon receivable orders to be obtained in the registry." A copy of the receipt for the sum paid in and a notice thereof should then be served on the adverse solicitor and the original filed. By r. 128, "Orders for the payment of money out of Court shall be signed by the judge;" but it will not generally be paid until the end of the action (*The Annie Childs*, Lush. 509). The money will not bear interest without an application is made to the Court with that object (*The North American*, Lush. 79; 5 Jur. N. S. 659); it is usual only if the sum is large.

The re-
lease.

As to the manner of releasing property under ordinary circumstances, by A. C. R., 1859, r. 46, "Property arrested by warrant shall only be released under the authority of an instrument issued from the registry, to be called a release." The præcipe on which the release is obtained recites the fact that bail has been given or money paid in respect of the cause of action, and that there is no caveat against the release of the property outstanding. If parts of the property under arrest are released at different times, separate releases are necessary. Also, by A. C. R., 1859, r. 47, "A solicitor at whose instance any property has been arrested may, *before an appearance has been entered*, obtain the release thereof by filing a præcipe to withdraw the warrant."

As regards r. 49, "Cargo arrested for the freight only may be released by filing an affidavit as to the value of the freight, and by paying the amount of the freight into the registry," the value is that which is due under the charter

party or bill of lading, and the amount is less the expenses of paying in.

By A. C. R., 1859, r. 52, "The release, when obtained, shall be left with a præcipe in the marshal's office by the solicitor taking out the same, who shall also at the same time pay all costs, charges, and expenses attending the care and custody of the property whilst under arrest, and the marshal shall thereupon release the property."

To prevent the release of any property under arrest, proceedings must be taken under A. C. R., 1859, r. 53. Caveat
against
release of
property
arrested.

"A solicitor in a cause shall file in the registry a præcipe, and thereupon a caveat against the release of the property shall be entered in a book to be kept in the registry called the 'Caveat Release Book,'" and thereupon no proceedings can be taken without notice to the person who enters such caveat. And care should be taken not to fall under r. 54. "A party delaying the release of any property by the entry of a caveat shall be liable to be condemned in costs and damages unless he shall show to the satisfaction of the judge good and sufficient reason for having so done" (and see *The Corner*, Br. & L. 161; 12 L. T. N. S. 62).

When such a caveat is entered the defendant may apply by motion or summons to overrule it if there is good reason for such a course. If an action is transferred from a County Court to the High Court, and the *res* is under arrest in the Superior Court in respect of other actions, A. C. R., 1859, r. 53 (*supra*), is applicable (*The Rio Lima*, 28 L. T. N. S. 774).

To the general proceedings as to bail, actions for salvage are an exception. Here the plaintiff is entitled to have the value of the *res* ascertained before it passes out of the hands of the Court. This value can be obtained in two ways. By A. C. R., 1859, r. 50, "In a cause of salvage the value of the property under arrest shall be agreed, or an affidavit of value filed before the property is released." Prelimina-
ries to bail
in salvage
actions.

(a) This agreement is usually binding on the parties Agree-

ment on or unless exceptional circumstances can be shown by affidavit
affidavit of for altering the agreed amount. (b) The affidavit should
value. contain the value of the property saved when the salvors' services were concluded. The amount, as shown in the affidavit, if it is given wrongly by a *bond fide* mistake, will be altered on application to the Court, even after a decree has been made (*The James Armstrong*, 4 L. R. Ad. 380; 33 L. T. N. S. 390). But generally, the value as shown is conclusive, *e.g.*, when the ship was afterwards sold for a larger sum (*The Betsy*, 5 C. Rob. 296; *The Hanna*, 37 L. T. N. S. 364). If the salvors are not satisfied with this value they are entitled to have the property officially appraised. As to official appraisements, see *ante*, p. 113. As to power of receivers of wreck, see *ante*, p. 23.

The three following rules are applicable to caveats generally.

Duration of caveat. 174. A caveat, whether against the issue of a warrant, the release of property, or the payment of money out of the registry, shall not remain in force for more than six months from the day of the date thereof.

With- 175. A caveat may be withdrawn by the party on whose behalf
drawal of it has been entered, or by his solicitor; but the præcipe to lead the
caveat. withdrawal thereof shall, save by permission of the registrar, be signed by the same person who signed the præcipe to lead the entry of the caveat.

176. Application may be made to the judge on motion or by summons to overrule any caveat.

ORDER VI.

CONCURRENT WRITS.

Concur- 1. The plaintiff in any action may, at the time of or at any time
rent writs. during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent

writ to bear teste of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ; and such seal shall be impressed upon the writ by the proper officer: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.

2. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given, out of the jurisdiction, may be issued and marked as a concurrent writ with one for service within the jurisdiction.

ORDER VII.

DISCLOSURE BY SOLICITORS AND PLAINTIFFS.

1. Every solicitor whose name shall be indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith whether such writ has been issued by him or with his authority or privity; and if such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a judge.

Disclosure
of client
by soli-
citor.

It was the ancient practice of the Court that the proctor should exhibit his proxy, showing that he was authorized to appear for his client. But this practice has gradually fallen into disuse, and it was of late always assumed that a solicitor who appeared for a party was duly authorized to do so; at the same time the Court, if it thought right, could always require the solicitor to state by name the parties for whom he was authorized to appear (*The Euxine*, 4 L. R. P. C. 8; 41 L. J. Ad. 17). The above rule will now govern the practice as between plaintiffs' solicitor and the defendant; but as regards the power of the Court to inquire, the old practice remains in force.

As to payment of solicitors' charges by a client during an action if he changes his solicitors during such action, see *The Oneiza*, 4 L. R. Ad. 36.

Disclosure
of mem-
bers of a
firm.
Renewal
of writ.

2. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of any defendant, declare forthwith the names and places of residence of all the persons constituting the firm. And if the plaintiffs or their solicitor shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court or a judge may direct. And when the names of the partners are so declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ. But all proceedings shall nevertheless continue in the name of the firm.

ORDER VIII.

RENEWAL OF WRIT.

Renewal of
writ.

1. No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to a judge, or the district registrar, for leave to renew the writ; and the judge or registrar, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked with a seal bearing the date of the day, month, and year of such renewal; such seal to be provided and kept for that purpose at the proper office, and to be impressed upon the writ by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in Form No. 5, in Appendix (A), Part I.;¹ and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons.

¹ See App. IV.

2. The production of a writ of summons purporting to be marked with the seal of the Court, showing the same to have been renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes.

By r. 166, 1859, every instrument must have been served within six months from the day on which it bore date, a warrant of arrest in an action *in rem* must therefore still be served within six months. As to service, see *post*, O. ix., r. 9. When the original writ is lost it cannot be renewed (*Davies v. Garland*, 1 L. R. Q. B. D. 250).

ORDER IX.

SERVICE OF WRIT OF SUMMONS.

1. *Mode of Service.*

1. No service of writ shall be required when the defendant, by his solicitor, agrees to accept service, and enters an appearance. Personal service.

2. When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made, but if it be made to appear to the Court or to a judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or judge may make such order for substituted or other service, or for the substitution of notice for service, as may seem just.

Rule 1 applies both to an action *in rem* and *in personam*, but r. 2 only to an action *in personam*.

As to personal service, see Chitty's Practice. As to service when defendant absconds, see *Cook v. Dey*, 2 L. R. Ch. D. 218; 45 L. J. Ch. 611; and *Raphael v. Ongley*, 34 L. T. N. S. 124.

2. *On Particular Defendants.*

3. When husband and wife are both defendants to the action, service on the husband shall be deemed good service on the wife, and wife, but the Court or a judge may order that the wife shall be served with or without service on the husband.

- Infant.** 1. When an infant is a defendant to the action, service on his or her father or guardian, or if none, then upon the person with whom the infant resides or under whose care he or she is, shall, unless the Court or judge otherwise orders, be deemed good service on the infant; provided that the Court or judge may order that service made or to be made on the infant shall be deemed good service.
- Lunatic.** 5. When a lunatic or person of unsound mind not so found by inquisition is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides, or under whose care he or she is, shall, unless the Court or judge otherwise orders, be deemed good service on such defendant.

These rules can only refer to actions *in personam*.

3. On Partners and other Bodies.

- Partners.** 6. Where partners are sued in the name of their firm, the writ shall be served either upon any one or more of the partners or at the principal place within the jurisdiction of the business of the partnership upon any person having at the time of service the control or management of the partnership business there; and, subject to the rules hereinafter contained, such service shall be deemed good service upon the firm.
- 6a. Where one person, carrying on business in the name of a firm apparently consisting of more than one person, shall be sued in the firm name, the writ may be served at the principal place within the jurisdiction of the business so carried on, upon any person having at the time of service the control or management of the business there; and, subject to any of the Rules of the Supreme Court, such service shall be deemed good service on the person so sued.
7. Whenever, by any statute, provision is made for service of any writ of summons, bill, petition, or other process upon any corporation, or upon any hundred, or the inhabitants of any place, or any society or fellowship, or any body or number of persons, whether corporate or otherwise, every writ of summons may be served in the manner so provided.

These rules again are only applicable to actions *in personam*.

- Service of warrant of arrest.** 9. "In Admiralty actions *in rem* the warrant of arrest shall be served by the marshal or his substitutes, whether the property to be arrested be situate within the port of London or elsewhere within

the jurisdiction of the Court, and the solicitor issuing the warrant shall, within six days from the service thereof, file the same in the registry."

As to time of service, see *ante*, O. viii., rr. 1 and 2.

In the district registries and outports the collectors of customs act as the marshal's substitutes. After the arrest the marshal is liable for the safe custody of the matter arrested (*The Hoop*, 4 C. Rob. 145); and any person who interferes with, or carries away this property, is liable to an attachment for contempt (*The Petrel*, 3 Hagg. 229).

A warrant against a ship extends to sails and rigging detached from it (*The Alexander*, 1 Dods. 282), but not to passengers' wearing apparel and personal luggage (*The Willem III.*, 3 L. R. Ad. 487; 25 L. T. N. S. 386).

And subsequent accretions in the value of a ship caused by repairs made by an owner are subject to the rights of a claimant (*The Aline*, 1 W. Rob. 111).

10. "In Admiralty actions *in rem*, service of a writ of summons ^{Manner} against ship, freight, or cargo on board, is to be effected by nailing ^{of serving.} or affixing the original writ for a short time on the mainmast, or on the single mast of the vessel, and, on taking off the process, leaving a true copy of it nailed or fixed in its place."

Any person may serve the writ of summons *in rem*. Service of a writ of summons *in rem* is equivalent to a notice to the owners of the subject-matter of the service and to all who may be interested in it (*The Dowthorpe*, 2 W. Rob. 80). And therefore in order that the service may be valid, the terms of this rule must be strictly followed (*The Marie Constance*, 37 L. T. N. S. 366).

11. If the cargo has been landed or transhipped, service of the ^{Service on} writ of summons to arrest the cargo and freight shall be effected by ^{cargo and} placing the writ for a short time on the cargo, and, on taking off ^{freight.} the process, by leaving a true copy upon it.

There is a mistake in this rule: the writ of summons cannot arrest the cargo; the rule must therefore be read as

if the words "to arrest the cargo and freight" were omitted, or instead of the above words "warrant" must have been intended.

The freight itself cannot be arrested, but when it remains unpaid the cargo can be arrested as representing it (*The Leo*, 31 L. J. Ad. 78 ; 6 L. T. N. S. 58). Nor can the cargo be arrested in a damage suit, except as representing freight (*The Flora*, 1 L. R. Ad. 45). But the usual way of proceeding against the freight is to move the judge to issue an order commanding those from whom the freight is due to pay the money into Court. The freight due on the whole of the cargo at the time a lien attaches is payable as well as on that part which is on board at the time of the arrest (*The Roecliff*, 2 L. R. Ad. 363 ; 38 L. J. Ad. 56).

Service of writ on custodian of cargo. 12. If the cargo be in the custody of a person who will not permit access to it, service of the writ may be made upon the custodian.

This rule applies only to cargo which has been landed.

Generally.

Indorsement of service. 13. The person serving a writ of summons shall, within three days at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default ; and every affidavit of service of such writ shall mention the day on which such indorsement was made.

ORDER X.

SUBSTITUTED SERVICE.

Substituted service. Every application to the Court or a judge, under Order IX., Rule 2, for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made.

This rule of course only applies to an action *in personam*. By A. C. Act, 1861, s. 20, if reasonable efforts to effect

service have been made, and the person to be served is aware of the writ, or wilfully evades service, then application is to be made to the judge. (See App. I., p. xxviii).

ORDER XI.

SERVICE OUT OF THE JURISDICTION.

1. Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a judge whenever the whole or any part of the subject-matter of the action is land or stock, or other property situate within the jurisdiction, or any act, deed, will, or thing affecting such land, stock, or property, and whenever the contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, was made or entered into within the jurisdiction, and whenever there has been a breach within the jurisdiction of any contract wherever made, and whenever any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done or is situate within the jurisdiction. Service out of jurisdiction.

1a. Whenever any action is brought in respect of any contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, when such contract was made or entered into within the jurisdiction, or whenever there has been a breach within the jurisdiction of any contract, wherever made, the judge, in exercising his discretion as to granting leave to serve such writ or notice on a defendant out of the jurisdiction, shall have regard to the amount or value of the property in dispute or sought to be recovered, and to the existence in the place of residence of the defendant, if resident in Scotland or Ireland, of a local Court of limited jurisdiction, having jurisdiction in the matter in question, and to the comparative cost and convenience of proceeding in England or in the place of such defendant's residence; and in all the above-mentioned cases no such leave is to be granted without an affidavit stating the particulars necessary for enabling the judge to exercise his discretion in manner aforesaid, and all such other particulars (if any) as he may require to be shown.

See *ante*, O. ii., r. 5, note.

Rule 1 applies also to third parties, to whom notice is given under O. xvi. (*The Swansea Shipping Co. v. Duncan* 1 L. R. Q. B. D. 644; 45 L. J. Q. B. 638).

Leave for
service out
of the
jurisdic-
tion.

3. Every application for an order for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by evidence, by affidavit, or otherwise, showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made.

4. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given.

5. Notice in lieu of service shall be given in the manner in which writs of summons are served.

ORDER XII.

APPEARANCE.

Appear-
ance.

1. Except in the cases otherwise provided for by these Rules a defendant shall enter his appearance in London.

2. If any defendant to a writ issued in a district registry resides or carries on business within the district, he shall appear in the district registry.

In district
registry.

3. If any defendant neither resides nor carries on business in the district, he may appear either in the district registry or in London.

4. If a sole defendant appears, or all the defendants appear in the district registry, or if all the defendants who appear in the district registry and the others make default in appearance, then, subject to the power of removal hereinafter provided, the action shall proceed in the district registry.

5. If the defendant appears, or any of the defendants appear, in London the action shall proceed in London; provided that if the Court or a judge shall be satisfied that the defendant appearing in London is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such Court or judge may order that the action may proceed in the district registry, notwithstanding such appearance in London.

When a writ is issued from a district registry, and the defendant enters an appearance in the London registry, the memorandum of appearance should recite that the action has been begun in the district registry, its title in that registry, and that the defendant is out of the jurisdiction of that registry (*The General Birch*, 33 L. T. N. S. 792; 24 W. R. 24).

6. A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing dated on the day of delivering the same, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. Memorandum of appearance.

A defendant who appears elsewhere than where the writ is issued, shall on the same day give notice of his appearance to the plaintiff's solicitor, or to the plaintiff himself if he sues in person, either by notice in writing served in the ordinary way at the address for service within the district of the district registry, or by prepaid letter directed to such address, and posted on that day in due course of post.

An absolute appearance once entered cannot be recalled (*The Blakeney*, Swa. 428). But the defendant if he considers that the Court has no jurisdiction over the subject-matter of the action may appear under protest, taking advantage of A. C. R., 1859, r. 3: "If the solicitor intends to object to the jurisdiction of the Court the appearance may be entered under protest" (*The Vivar*, 2 L. R. Ad. D. 29; 35 L. T. N. S. 782). The memorandum of appearance should in that case bear the words "under protest" on it. Appearance under protest.

When the defendant has thus appeared under protest he may deliver a petition on protest, wherein the facts which show the want of jurisdiction should be stated (*The Pieve Superiore*, 5 L. R. P. C. 482; 43 L. J. Ad. 20). With the exception of the commencement the form of the petition should be that of an ordinary statement of claim. See Precedent, App. VI. To this the plaintiff replies, or he may move the Court to reject the petition. A more expeditious and ordinary course for a defendant under protest to pursue is to move the Court to dismiss the

action or statement of claim. Should the protest be overruled the action will proceed in the ordinary course.

Address for service. 7. The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business, and, if the appearance is entered in the London office, a place, to be called his address for service, which shall not be more than three miles from Temple Bar; and if the appearance is entered in a district registry, a place to be called his address for service, which shall be within the district.

8. A defendant appearing in person shall state in such memorandum his address, and, if the appearance is entered in the London office, a place to be called his address for service, which shall not be more than three miles from Temple Bar; and if the appearance is entered in a district registry, a place, to be called his address for service, which shall be within the district.

9. If the memorandum does not contain such address it shall not be received; and if any such address shall be illusory or fictitious, the appearance may be set aside by the Court or a judge, on the application of the plaintiff.

10. The memorandum of appearance shall be in the Form No. 6, Appendix (A), Part I., with such variations as the circumstances of the case may require.

It has been decided in the Admiralty registry that in an action *in rem* the names of the parties need not necessarily appear. See O. vii. For this form see App. IV.

Entry of appearance.
Appearance by partners.

11. Upon a receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the cause book.

12. Where partners are sued in the name of their firm, they shall appear individually in their own names. But all subsequent proceedings shall, nevertheless, continue in the name of the firm.

12a. Where any person carrying on business in the name of a firm, apparently consisting of more than one person, shall be sued in the name of the firm, he shall appear in his own name; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

By two or more defendants.

13. If two or more defendants in the same action shall appear by the same solicitor and at the same time, the names of the defendants so appearing shall be inserted in one memorandum.

This last rule is of importance since in actions *in rem* there may often be several defendants; as to persons who may appear in an action *in rem*, see r. 17, *post*.

14. A solicitor not entering an appearance in pursuance of his written undertaking so to do on behalf of any defendant shall be liable to an attachment.

Non-entry of appearance by solicitor.

15. A defendant may appear at any time before judgment. If he appear at any time after the time limited for appearance he shall, on the same day, give notice thereof to the plaintiff's solicitor, or to the plaintiff himself if he sues in person, and he shall not, unless the Court or a judge otherwise orders, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ.

Time of appearance.

17. In an Admiralty action *in rem*, any person not named in the writ may intervene and appear as heretofore, on filing an affidavit showing that he is interested in the *res* under arrest, or in the fund in the registry

Intervention of any person having an interest in the property arrested.

The first part of this rule distinctly enunciates what was long a practice in the Court of Admiralty. A substantial interest in the *res* or fund is required, or in other words an interest which may be injuriously affected by the decree in the action (*The Dowthorpe*, 2 W. Rob. 73 (77)). This principle does not in reality conflict with the judgment in *The Killarney*, Lush. 427 (435), 6 L. T. N. S. 908, where it was assumed that the interests of third parties would from the nature of the defendant's case be properly cared for by them without the necessity of a separate appearance.

So a mortgagee may appear (*The Julinder*, Spk. 75), and the trustee of a bankrupt (*The Dowthorpe*, *supra*), and underwriters, as long as they fall within the above principle (*The Regina del Mare*, Br. & Lush. 315). The owners of a ship which has been found to blame in a collision suit may appear in an action of salvage against the injured and salved ship, and if they put in bail in lieu of the latter, may conduct the defence, whilst the bail of the salved ship will be discharged (*The Diana*, 31 L. T. N. S. 203). So also may the owners of cargo in a wages suit against ship and freight, where the claimants desire to be preferred to bottomry bondholders, since the result may cause the latter to have a claim against the cargo (*The Union*, Lush. 128; 30 L. J. Ad. 19). Adverse claimants would, it seems,

also be allowed to appear (*The India*, 32 L. J. Ad. 35; *The Volant*, Br. & Lush. 321; *The Eastern Belle*, 33 L. T. N. S. 214).

ORDER XIII.

DEFAULT OF APPEARANCE.

Default of
appear-
ance in
actions *in*
personam.

1. Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not so found by inquisitions, the plaintiff may apply to the Court or a judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court or judge at the time of hearing such application shall dispense with such last-mentioned service.

This rule is applicable only to actions *in personam*.

2. Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance under any of the following rules of this order, or under Order XV., Rule 1, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may be.

Default in
claim for
liquidated
demand.

5. Where the defendant fails to appear to the writ of summons and the writ is not specially indorsed, but the plaintiff's claim is for a debt or liquidated demand only, no statement of claim need be delivered, but the plaintiff may file an affidavit of service or notice in lieu of service, as the case may be, and a statement of the particulars of his claim in respect of the causes of action stated in the indorsement

upon the writ, and may, after the expiration of eight days, enter final judgment for the amount shown thereby and costs to be taxed, provided that the amount shall not be more than the sum indorsed upon the writ besides costs.

5a. Where a defendant fails to appear to a writ of summons, issued out of a district registry, and the defendant had the option of entering an appearance either in the district registry or in the London office, judgment for want of appearance shall not be entered by the plaintiff until after such time as a letter posted in London on the previous evening, in due time for delivery to him on the following morning, ought, in due course of post, to have reached him.

The above rules only apply to actions *in personam*.

(10.) In an Admiralty action *in rem*, in which an appearance has not been entered, the plaintiff may proceed as follows :—

"If within a fortnight after service of a writ of summons and warrant no appearance shall have been entered in the action, the solicitor for the plaintiff may file his statement of claim. And if within a fortnight from the filing of the statement of claim no appearance shall have been entered, the plaintiff's solicitor may, on bringing in his proofs, enter the action for trial.

"If, when the action comes before the judge he is satisfied that the plaintiff's claim is well founded, he may pronounce for the claim with or without a reference to the registrar or the registrar assisted by merchants, and may at the same time order the property to be appraised and sold with or without previous notice, and the proceeds to be paid into Court, or may make such order in the premises as to him shall seem just."

Rule 10 of the Judicature Rules having been repealed the old practice was revived and embodied in the preceding rules. The practice is to enter the cause for hearing when it will be set down in the list; but in some cases where there are exceptional circumstances the cause may come before the judge on motion for judgment under O. xl, r. 1, and a decree will be made according to the claim on the writ without a statement of claim as required by the above rules (*The Juliana*, 35 L. T. N. S. 410) where there was a fund in Court, a previous action in regard to the same subject-matter had been allowed to go by default, and the last claim was for wages.

In the case of an action on a bottomry bond the original bond must in all cases be brought into Court (*The Rowena*, 37 L. T. N. S. 366).

When foreign sailors are plaintiffs and a sum is demanded by way of *viaticum*, a certificate of their consul must be brought to the notice of the judge, stating that the plaintiffs are returning home at their own cost (*The Raffuelluccia*, 37 L. T. N. S. 365).

The Court will generally also grant leave to bondholders to pay prior charges, as wages and other claims, and to have a lien in respect thereof, so as to save expense of actions, on an affidavit shewing the charges (*The Fair Haven*, 1 L. R. Ad. 67).

ORDER XV.

APPLICATION FOR ACCOUNT WHERE WRIT INDORSED UNDER ORDER III., RULE 8.

Applica-
tion for
account

1. In default of appearance to a summons indorsed under Order III., Rule 8, and after appearance unless the defendant, by affidavit or otherwise, satisfy the Court or a judge that there is some preliminary question to be tried, an order for the account claimed, with all directions now usual in the Court of Chancery in similar cases, shall be forthwith made.

2. An application for such order as mentioned in the last preceding rule shall be made by summons, and be supported by an affidavit filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired.

ORDER XVI.

PARTIES.

Parties.

1. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given for such one or more

of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person or persons who shall not be found entitled to relief, unless the Court in disposing of the costs of the action shall otherwise direct.

2. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff or plaintiffs, the Court or a judge may, if satisfied that it has been so commenced through a *bond fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as may seem just.

Where the bailee of a vessel brings an action and is successful, the Court will take security that the owners do not also bring an action, and that both parties consent to the appropriation of the sum awarded (*The Minna*, 2 L. R. Ad. 97). In such a case it would be advisable to join both bailees and owners under the first of the above rules.

The assignors of a cause of action where there is no lien may sue for the assignees even though the assignor's claim does not accrue, and even if their general property has vested in a trustee in bankruptcy (*The Wasp*, 1 L. R. Ad. 367).

Any number of persons having a common interest may be joined as plaintiffs, thus several seamen may unite in a wages suit, and the owner of the ship and the owner of the cargo in an action for damages.

A charterer being generally, *pro hac vice*, owner of the vessel, should be a party to an action for salvage instead of the actual owner (*The Scout*, 3 L. R. Ad. 512; 41 L. J. Ad. 42), and the representative of a foreigner lost at sea in an action of damage (*The Explorer*, 3 L. R. Ad. 289; 40 L. J. Ad. 41).

3. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more

of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

It will be obvious that this rule can apply only to an action *in personam*.

4. It shall not be necessary that every defendant to any action shall be interested as to all the relief thereby prayed for, or as to every cause of action included therein; but the Court or a judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in such action in which he may have no interest.

5. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

6. Where in any action, whether founded upon contract or otherwise, the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that in such action the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties to the action.

Trustees
and execu-
tors.

7. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the action; but the Court or a judge may, at any stage of the proceedings, order any of such parties to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto.

Married
women and
infants.

8. Married women and infants may respectively sue as plaintiffs by their next friends, in the manner practised in the Court of Chancery before the passing of this Act; and infants may, in like manner, defend any action by their guardians appointed for that purpose. Married women may also, by the leave of the Court or a judge, sue or defend without their husbands and without a next friend, on giving such security (if any) for costs as the Court or a judge may require.

A guardian of an infant is appointed by an instrument called a proxy, which appointment must be accepted by an instrument in writing, and both documents must then be

filed in the registry (*The Albert Crosby*, Lush, 44). This was usually the practice when an infant was a plaintiff, but r. 8 appears to have altered the former practice. A child en ventre sa mère, can sue in actions of damage under 9 & 10 Vict. c. 93. (*The George & Richard*, 3 L. R. Ad. 466; 24 L. T. N. S. 717.)

9. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorized by the Court to defend in such action, on behalf or for the benefit of all parties so interested. Representative party.

10. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of their respective firms, if any; and any party to an action may in such case apply by summons to a judge for a statement of the names of the persons who are co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the judge may direct. Partners.

10a. Any person carrying on business in the name of a firm apparently consisting of more than one person may be sued in the name of such firm.

13. No action shall be defeated by reason of the misjoinder of parties, and the Court may in every action deal with the matter in controversy so far as regards the rights and interest of the parties actually before it. The Court or a judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a judge to be just, order that the name or names of any party or parties, whether as plaintiffs or as defendants, improperly joined, be struck out, and that the name or names of any party or parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent thereto. All parties whose names are so added as defendants shall be served with a summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against them shall be deemed to have begun only on the service of such summons or notice. Misjoinder of parties.

This rule is useful in actions of possession. Thus should parties not be before the Court as defendants, the plaintiff

whilst obtaining possession of a ship may not have anyone by whom payment of costs may be made. In such a case the Court will order persons who have not appeared and who are interested in the subject-matter of the action to be made parties. This practice was adopted in *The Annandale*, 37 L. T. N. S. 364, and in *The Native Pearl*, 37 L. T. N. S. 542, wherein the owner was served with notice of the proceedings.

Striking
out and
adding
parties.

14. Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court or a judge at any time before trial by motion or summons, or at the trial of the action in a summary manner.

15. Where a defendant is added, unless otherwise ordered by the Court or judge, the plaintiff shall file an amended copy of and sue out a writ of summons, and serve such new defendant with such writ or notice in lieu of service thereof in the same manner as original defendants are served.

16. If a statement of claim has been delivered previously to such defendant being added, the same shall, unless otherwise ordered by the Court or judge, be amended in such manner as the making such new defendant a party shall render desirable, and a copy of such amended statement of claim shall be delivered to such new defendant at the time when he is served with the writ of summons or notice or afterwards, within four days after his appearance.

Claim by
defendant
against
third
parties.

17. Where a defendant is or claims to be entitled to contribution or indemnity or any other remedy or relief over against any other person, or where from any other cause it appears to the Court or a judge that a question in the action should be determined not only as between the plaintiff and defendant, but as between the plaintiff, defendant, and any other person, or between any or either of them, the Court or a judge may on notice being given to such last-mentioned person, make such order as may be proper for having the question so determined.

See note to succeeding rule.

18. Where a defendant claims to be entitled to contribution, indemnity, or other remedy or relief over against any person not a party to the action, he may, by leave of the Court or a judge, issue a notice to that effect, stamped with the seal with which writs of

summons are sealed. A copy of such notice shall be filed with the proper officer and served on such person according to the rules relating to the service of writs of summons. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court or a judge, be served within the time limited for delivering his statement of defence. Such notice may be in the form or to the effect of the Form No. 1, in Appendix (B) hereto, with such variations as circumstances may require, and therewith shall be served a copy of the statement of claim, or if there be no statement of claim, then a copy of the writ of summons in the action.

For example on contract, see *ex parte* Smith, *In re* Collie, 2 L. R. Ch. D. 51; 45 L. J. Bk. 116. A, vendor, B, vendee, who becomes bankrupt. Action by A against C as having bought the goods on account of B, as undisclosed principal. C serves notice on trustee of estate of B under the above rule. As regards actions of tort the circumstances in which a defendant may bring in a third party are these: assuming a judgment to be given against him, he would thereupon be entitled to found proceedings against such party if not brought into the action—the rule would then apply, and such third party might be brought in under r. 17; but the order does not apply when a judgment would render the defendant either absolutely liable for or absolutely free from any wrong doing. The procedure is very fully discussed in *Howell v. London General Omnibus Co.*, 2 L. R. Ex. 365; 46 L. J. Exch. 700.

It may be exemplified by two instances: action by ship A against ship B in tow of C for damage by collision; B claims to be indemnified by C, as the collision was owing to the negligence of C. According to the above principle r. 17 would not apply here. Action by A, salvor, against B, salvaged ship, the necessity for such salvage having been caused by a collision between B and C. B serves the owners of C with notice that they claim to be indemnified by C for the amount of salvage and costs of suit. This procedure would be quite regular.

19. When under Rule 17 of this Order it is made to appear to the

Court or a judge at any time before or at the trial that a question in the action should be determined, not only as between the plaintiff and defendant, but as between the plaintiff and the defendant and any other person, or between any or either of them, the Court or a judge, before or at the time of making the order for having such question determined, shall direct such notice to be given by the plaintiff at such time and to such person and in such manner as may be thought proper, and if made at the trial the judge may postpone such trial as he may think fit.

20. If a person not a party to the action who is served as mentioned in Rule 18, desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, he must enter an appearance in the action within eight days from the service of the notice. In default of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise. Provided always, that a person so served and failing to appear within the said period of eight days may apply to the Court or a judge for leave to appear, and such leave may be given upon such terms, if any, as the Court or a judge shall think fit.

21. If a person not a party to the action served under these rules appears pursuant to the notice, the party giving the notice may apply to the Court or a judge for directions as to the mode of having the question in the action determined ; and the Court or judge, upon the hearing of such application, may, if it shall appear desirable so to do, give the person so served liberty to defend the action upon such terms as shall seem just, and may direct such pleadings to be delivered, or such amendments in any pleadings to be made, and generally may direct such proceedings to be taken, and give such directions as to the Court or a judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the person so served shall be bound or made liable by the decision of the question.

ORDER XVII.

JOINDER OF CAUSES OF ACTION.

1. Subject to the following rules, the plaintiff may unite in the Joinder of same action and in the same statement of claim several causes of causes of action, but if it appear to the Court or a judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

3. Claims by a trustee in bankruptcy as such shall not, unless by leave of the Court or a judge, be joined with any claim by him in any other capacity.

4. Claims by or against husband and wife may be joined with claims by or against either of them separately.

5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

7. The last three preceding rules shall be subject to Rule 1 of this Order, and to the rules hereinafter contained.

8. Any defendant alleging that the plaintiff has united in the Confining same action several causes of action which cannot be conveniently action. disposed of in one action, may at any time apply to the Court or a judge for an order confining the action to such of the causes of action as may be conveniently disposed of in one proceeding.

9. If, on the hearing of such application as in the last preceding rule mentioned, it shall appear to the Court or a judge that the causes of action are such as cannot all be conveniently disposed of in one action, the Court or a judge may order any of such causes of action to be excluded, and may direct the statement of claim, or, if no statement of claim has been delivered, the copy of the writ of summons, and the indorsement of claim on the writ of summons, to be amended accordingly, and may make such order as to costs as may be just.

ORDER XVIII.

ACTIONS BY AND AGAINST LUNATICS AND PERSONS OF
UNSOUND MIND.

Action by lunatics, &c. In all cases in which lunatics and persons of unsound mind not so found by inquisition might respectively before the passing of the Act have sued as plaintiffs or would have been liable to be sued as defendants in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend in manner practised in the Court of Chancery before the passing of the said Act, and may in like manner defend any action by their committees or guardians appointed for that purpose.

ORDER XIX.

PLEADING GENERALLY.

Pleadings: 1. The following rules of pleading shall be substituted for those they must be brief and contain material facts only. heretofore used in the High Court of Chancery and in the Courts of Common Law, Admiralty, and Probate.

2. Unless the defendant in an action at the time of his appearance shall state that he does not require the delivery of a statement of complaint, the plaintiff shall within such time and in such manner as hereinafter prescribed, deliver to the defendant after his appearance a statement of his complaint and of the relief or remedy to which he claims to be entitled. The defendant shall within such time and in such manner as hereinafter prescribed deliver to the plaintiff a statement of his defence, set-off, or counter-claim (if any), and the plaintiff shall in like manner deliver a statement of his reply (if any) to such defence, set-off, or counter-claim. *Such statements shall be as brief as the nature of the case will admit,* and the Court in adjusting the costs of the action shall inquire at the instance of any party into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

These and the following rules apply to petitions on pro-

test and against the report of the registrar as well as to ordinary pleadings (J. A., 1873, s. 100, and O. i., r. 3).

The briefness must necessarily depend on the circumstances of each particular case, but it was pointed out under the old Admiralty procedure, upon which these rules are modelled, that not every material fact need be pleaded, but such only as if proved or admitted would establish the plaintiff's (or defendant's) case (*The West of England*, 1 L. R. Ad. 307). On the other hand, every material fact on which the parties intend to rely must—it will be seen under r. 4—be pleaded. And it was held (under the old practice) that a fact was not to be implied from a general allegation, but to be distinctly stated. This decision is still applicable (*The Marpesia*, 4 L. R. P. C. 212; 26 L. T. N. S. 333).

3. A defendant in an action may set-off, or set up, by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim *sound in damages or not*, and such set-off or counter-claim shall have the same effect as a statement of claim in a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a judge may, on the application of the plaintiff before trial, if in the opinion of the Court or judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

By this rule cross-actions, such as those for damage by collision are no longer necessary, for any cross-claim or set-off which a defendant may have can be pleaded by way of counter-claim so long as it can be conveniently disposed of in the pending action. Thus the limitation of liability under M. S. Act, 1862, s. 54, can be claimed in this manner (e.g. *The Clutha*, 45 L. J. Ad. 108; 35 L. T. N. S. 36). Though it has been held that it may be properly pleaded as a partial ground of defence (*Wahlberg v. Young*, 45 L. J. C. P. D. 783; see further O. liii., note on limitation of liability). It has been laid down as a principle that "the set-off claimed must be connected with the original

cause of action" (Padwick v. Scott, 2 L. R. Ch. D. 736; 45 L. J. Ch. 350). As to striking out counter-claims, see *post*, O. xxii., r. 9; but even with this limitation the Admiralty jurisdiction in this matter is much enlarged, since it was more or less confined to actions for wages (see *The Don Francisco*, Lush. 468; 5 L. T. N. S. 460).

Evidence
not to be
pleaded.

4. Every pleading shall contain as concisely as may be a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved, such statement being divided into paragraphs, numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary. Forms similar to those in Appendix (C) hereto may be used.

As to some of the rules of pleading, see *ante*, r. 2.

5. Every pleading which shall contain less than ten folios of 72 words each (every figure being counted as one word) may be either printed or written, or partly printed and partly written, and every other pleading, not being a petition or summons, shall be printed.

Delivery of
pleadings.

6. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor, but if no appearance has been entered for any party, then such pleading or document shall be delivered by being filed with the proper officer.

This rule supersedes the old practice of filing pleadings in the registry, except in cases of objection to the Registrar's Report.

Date of
delivery of
pleadings.

7. Every pleading in an action shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, and with the reference to the letter and number of the action, the division to which and the judge (if any) to whom the action is assigned, the title of the action, the description of the pleading, and the name and place of business of the solicitor and agent, if any, delivering the same, or the name and address of the party delivering the same if he does not act by a solicitor.

Statement
of relief
claimed.

8. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also

ask for general relief. And the same rule shall apply to any counter-claim made, or relief claimed by the defendant, in his statement of defence. If the plaintiff's claim be for discovery only the statement of claim shall show it.

9. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counter-claim founded upon separate and distinct facts.

10. Where any defendant seeks to rely upon any facts as support- Set-off. ing a right of set-off or counter-claim, he shall, in his statement of defence, state specifically that he does so by way of set-off or counter-claim.

11. If either party wishes to deny the right of any other party to claim as executor or as trustee, whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.

17. Every allegation of fact in any pleading in an action, not being a petition or summons if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition.¹ Admission in plead- inga.

It was decided under the old practice that an admission of law could not be made in pleadings, and r. 17, by implication, supports this decision (*The Peerless*, Lush. 103, 13 Moo. 484).

18. Each party in any pleading, not being a petition or summons, must allege all such facts not appearing in the previous pleadings as he means to rely on, and must raise all such grounds of defence or reply, as the case may be, as if not raised on the pleadings would be likely to take the opposite party by surprise, or would raise new issues of fact not arising out of the pleadings, as for instance, fraud, or that any claim has been barred by the Statute of Limitations or has been released. Allegation of material facts.

19. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any

¹ The five preceding rules are omitted, as inapplicable to Admiralty actions.

allegation of fact inconsistent with the previous pleadings of the party pleading the same.

Rule 19 would not, according to the old practice, apply to petitions on protest or against the registrar's report, and it would not be considered now as applicable to these cases.

Denial of facts.

20. It shall not be sufficient for a defendant in his defence to deny generally the facts alleged by the statement of claim, or for a plaintiff in his reply to deny generally the facts alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth.

21. Subject to the last preceding rule the plaintiff by his reply may join issue upon the defence, and each party in his pleading, if any, subsequent to reply, may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.

22. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And so when a matter of fact is alleged with divers circumstances, it shall not be sufficient to deny it as alleged along with those circumstances, but a fair and substantial answer must be given.

Allegation of contract.

23. When a contract is alleged in any pleading, a bare denial of the contract by the opposite party shall be construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to the Statute of Frauds or otherwise.

Documents.

24. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material.

Malice' c.

25. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

26. Wherever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice be material.

27. Wherever any contract or any relation between any persons does not arise from an express agreement, but is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative. Implied contracts.

28. Neither party need in any pleading allege any matter of fact which the law presumes in his favour, or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied. Presumption of fact.

[E.g.—Consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.]

30. In actions for damage by collisions between vessels, unless the Court or a judge shall otherwise order, each solicitor shall, before any pleading is delivered, file with the proper officer a document to be called a Preliminary Act, which shall be sealed up and shall not be opened until ordered by the Court or a judge, and which shall contain a statement of the following particulars :—

- (a.) The names of the vessels which came into collision and the names of their masters.
- (b.) The time of the collision.
- (c.) The place of the collision.
- (d.) The direction of the wind.
- (e.) The state of the weather.
- (f.) The state and force of the tide.
- (g.) The course and speed of the vessel when the other was seen.
- (h.) The lights, if any, carried by her.
- (i.) The distance and bearing of the other vessel when first seen.
- (k.) The lights, if any, of the other vessel which were first seen.
- (l.) Whether any lights of the other vessel, other than those first seen, came into view before the collision.
- (m.) What measures were taken, and when, to avoid the collision.
- (n.) The parts of each vessel which first came into contact.

If both solicitors consent, the Court or judge may order the

Preliminary Acts to be opened and the evidence to be taken thereon without its being necessary to deliver any pleadings.

The object of the Preliminary Act is to have the leading circumstances of the collision placed in a formal documentary shape whilst fresh in the recollection of the parties ; any application, therefore, to amend the Act must be made at once, and no amendment will be allowed at the hearing (*The Vortigern*, Swa. 518 ; *The Frankland*, 3 L. R. Ad. 511 ; 41 L. J. Ad. 3).

And Preliminary Acts are only required in actions by one ship against another for damage caused by collision, and not where an action is brought by some one other than the owner of the injured vessel, as by the owner of cargo laden on board a ship, against that ship for damage caused by collision with another vessel (*The John Boyne*, 36 L. T. N. S. 29 ; 25 W. R. 756).

Nor may a party, at the hearing, contradict his Preliminary Act (*The Vortigern*, *supra*.) And an order is in all cases necessary if it is desired to open the Preliminary Acts.

Pleadings
in district
registry.

29. Where an action proceeds in a district registry all pleadings and other documents required to be filed shall be filed in the district registry.

ORDER XX.

PLEADING MATTERS ARISING PENDING THE ACTION.

Pleading
matters
which arise
pending
hearing.

1. Any ground of defence which has arisen after action brought but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be pleaded by the defendant in his statement of defence, either alone or together with other grounds of defence. And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counter-claim alleged therein by the defendant, it may be pleaded by

the plaintiff in his reply, either alone or together with any other ground of reply.

2. Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivering a reply has expired, the plaintiff may, within eight days after such ground of defence has arisen, and by leave of the Court or a judge, deliver a further defence or further reply, as the case may be, setting forth the same.

3. Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last rule mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence, which confession may be in the Form No. 2 in Appendix (B) hereto, with such variations as circumstances may require, and he may thereupon sign judgment for his costs up to the time of the pleading of such defence unless the Court or a judge shall, either before or after the delivery of such confession, otherwise order.

ORDER XXI.

STATEMENT OF CLAIM.

1. Subject to Rules 2 and 3 of this Order, the delivery of statements of claim shall be regulated as follows:—

Delivery of
statement
of claim.

(a) If the defendant shall not state that he does not require the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the Court or a judge, deliver it within six weeks from the time of the defendant's entering his appearance.

(b) The plaintiff may, if he think fit, at any time after the issue of the writ of summons, deliver a statement of claim, with the writ of summons or notice in lieu of writ of summons, or at any time afterwards, either before or after appearance, and although the defendant may have appeared and stated that he does not require a statement of claim: Provided that in no case where a defendant has appeared shall a statement be delivered more than six weeks after the appearance has been entered unless otherwise ordered by the Court or a judge.

(c) Where a plaintiff delivers a statement of claim without being

required to do so, the Court or a judge may make such order as to the costs occasioned thereby as shall seem just, if it appears that the delivery of a statement of claim was unnecessary or improper.

As to enlarging time, O. lvii, r. 6.

Time for
delivery of
statement
of claim
in actions
in rem.
Where
writ is
specially
indorsed.

3. In Admiralty actions *in rem*, the plaintiff shall, within twelve days from the appearance of the defendant, deliver his statement of claim.

4. Where the writ is especially indorsed, and the defendant has not dispensed with a statement of claim, it shall be sufficient for the plaintiff to deliver as his statement of claim, a notice to the effect that his claim is that which appears by the indorsement upon the writ, unless the Court or a judge shall order him to deliver a further statement. Such notice may be either written or printed, or partly written and partly printed, and may be in the Form No. 3 in Appendix (B) hereto, and shall be marked on the face in the same manner as is required in the case of an ordinary statement of claim. And when the plaintiff is ordered to deliver such further statement, it shall be delivered within such time as by such order shall be directed, and if no time be so limited, then within the time prescribed by Rule 1 of this Order.

ORDER XXII.

DEFENCE.

Delivery of
statement
of defence.

1. Where a statement of claim is delivered to a defendant he shall deliver his defence within eight days from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last, unless such time is extended by the Court or a judge.

As to demurrers, see O. xxviii, r. 3. A demurrer is a "defence" (*Hodges v. Hodges*, 2 L. R. Ch. D. 112; 24 W. R. 293).

2. A defendant who has appeared in an action and stated that he does not require the delivery of a statement of claim, and to whom a statement of claim is not delivered, may deliver a defence at any time within eight days after his appearance, unless such time is extended by the Court or a judge.

4. Where the Court or a judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the Court may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted. Admission of denied facts.

5. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other person or persons, he shall add to the title of his defence a further title similar to the title in a statement of complaint, setting forth the names of all the persons who, if such counter-claim were to be enforced by cross action, would be defendants to such cross-action, and shall deliver his defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff. Raising questions against third parties.

6. Where any such person as in the last preceding rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same rules as are hereinbefore contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the Form No. 4 in Appendix (B) hereto, or to the like effect.

7. Any person not a defendant to the action, who is served with a defence and counter-claim as aforesaid, must appear thereto as if he had been served with a writ of summons to appear in an action. Appearance of third parties.

8. Any person named in a defence as a party to a counter-claim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim.

See O. xvi., rr. 20 and 21, and r. 1 of this Order. The time is eight days.

Rule 8 does not allow a third party to deliver a counter-claim (*Street v. Gover*, 2 L. R. Q. B. 498, 46 L. J. Q. B. 582).

9. Where a defendant by his statement of defence sets up a counter-claim, if the plaintiff or any other person named in manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may, at any time before reply, apply to the Court or a judge for an order that such counter-claim may be excluded, and the Court or a judge may, on the hearing of such application, make such order as shall be just. Exclusion of counter-claims.

See O. xix., r. 3.

10. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

ORDER XXIII.

DISCONTINUANCE.

**Discon-
tinuance.**

1. The plaintiff may, at any time before receipt of the defendant's statement of defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay the defendant's costs of the action, or, if the action be not wholly discontinued, the defendant's costs occasioned by the matter so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the Court or a judge, but the Court or a judge may, before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise as may seem fit, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The Court or a judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave.

The order as to costs in the first part of this rule refers to all the costs incurred, and is absolute (*The St. Olaf*, 2 L. R. Ad. D. 113; 36 L. T. N. S. 30). And when money has been paid into Court in lieu of bail, and the *res* has been arrested without due cause, if the plaintiff discontinues his action he will be ordered to pay interest on the

sum paid into Court, in addition to costs (*The Western Ocean*, 3 L. R. Ad. 40).

2. Where a cause has been entered for trial it may be withdrawn by either plaintiff or defendant upon producing to the proper officer a consent in writing signed by the parties.

2a. A defendant may sign judgment for the costs of an action if it is wholly discontinued, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued.

ORDER XXIV.

REPLY AND SUBSEQUENT PLEADINGS.

1. A plaintiff shall deliver his reply, if any, within three weeks after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the Court or a judge.

2. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or a judge, and then upon such terms as the Court or judge shall think fit.

3. Subject to the last preceding rule, every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading, unless the time shall be extended by the Court or a judge.

ORDER XXV.

CLOSE OF PLEADINGS.

As soon as either party has joined issue upon any pleading of the opposite party simply without adding any further or other pleading thereto, the pleadings as between such parties shall be deemed to be closed.

ORDER XXVI.

ISSUES.

Issues.

Where in any action it appears to a judge that the statement of claim or defence or reply does not sufficiently define the issues of fact in dispute between the parties, he may direct the parties to prepare issues, and such issues shall, if the parties differ, be settled by the judge.

ORDER XXVII.

AMENDMENT OF PLEADINGS.

Amendment of pleadings.

1. The Court or a judge may, at any stage of the proceedings, allow either party to alter his statement of claim or defence or reply, or may order to be struck out or amended any matter in such statements respectively which may be scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action, and all such amendments shall be made as may be necessary for the purpose of determining the real questions or question in controversy between the parties.

2. The plaintiff may, without any leave, amend his statement of claim once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who shall have last appeared.

3. A defendant who has set up in his defence any set-off or counter-claim may, without any leave, amend such set-off or counter-claim at any time before the expiration of the time allowed him for pleading to the reply, and before pleading thereto, or in case there be no reply, then at any time before the expiration of twenty-eight days from the filing of his defence.

4. Where any party has amended his pleading under either of the last two preceding rules, the opposite party may, within eight days after the delivery to him of the amended pleading, apply to the Court or a judge, to disallow the amendment, or any part thereof, and the Court or judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may seem just.

5. Where any party has amended his pleading under Rule 2 or 3 of this Order, the other party may apply to the Court or a judge for leave to plead or amend his former pleading within such time and upon such terms as may seem just.

6. In all cases not provided for by the preceding rules of this order, application for leave to amend any pleading may be made by either party to the Court or a judge in chambers, or to the judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may seem just.

7. If a party who has obtained an order for leave to amend a pleading delivered by him does not amend the same within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become *ipso facto* void, unless the time is extended by the Court or a judge.

8. A pleading may be amended by written alterations in the pleading which has been delivered, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous or of such a nature that the making them in writing would render the pleading difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a print of the pleading as amended.

9. Whenever any pleading is amended, such pleading when amended shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz. : " Amended
day of . "

10. Whenever a pleading is amended, such amended pleading shall be delivered to the opposite party within the time allowed for amending the same.

11. The Court or a judge may, at any stage of the proceedings, allow the plaintiff to amend the writ of summons in such manner, and on such terms, as may seem just.

See as to amendments of writ of summons, note to O. ii., r. 2.

The Court has power to order a pleading to be partially amended, or to be wholly struck out according as it thinks just under the special circumstances of the case. (See *Cashin v. Cradock*, 3 L. R. Ch. D. 376 ; 35 L. T. N. S. 452 ;

Decisions
as to
amending
pleadings.

The Cybele, 37 L. T. N. S. 165.) And for an example under the former practice, see *The Antelope*, 4 L. R. Ad. 33; 42 L. J. Ad. 42. And under ordinary circumstances the Court of Appeal will not interfere with the discretion vested in the judge below, even though they may not entirely agree with his decision; and unless great injustice would be done by such non-interference. (*Golding v. The Wharton Railway Co. v. Rodwell*, 1 L. R. Q. B. D. 374; 34 L. T. N. S. 474; *Watson v. Rodwell*, 3 L. R. Ch. 380; 45 L. J. Ch. 744.)

ORDER XXVIII.

DEMURRER.

Demurrer. 1. Any party may demur to any pleading of the opposite party, or to any part of a pleading setting up a distinct cause of action, ground of defence, set-off, counter-claim, reply, or as the case may be, on the ground that the facts alleged therein do not show any cause of action, or ground of defence to a claim or any part thereof, or set-off, or counter-claim, or reply, or as the case may be, to which effect can be given by the Court as against the party demurring.

2. A demurrer shall state specifically whether it is to the whole or to a part, and if so, to what part, of the pleading of the opposite party. It shall state some ground in law for the demurrer, but the party demurring shall not, on the argument of the demurrer, be limited to the ground so stated. A demurrer may be in the Form 28 in Appendix (C) hereto. If there is no ground, or only a frivolous ground of demurrer stated, the Court or judge may set aside such demurrer, with costs.

3. A demurrer shall be delivered in the same manner and within the same time as any other pleading in the action.

4. A defendant desiring to demur to part of a statement of claim, and to put in a defence to the other part, shall combine such demurrer and defence in one pleading. And so in every case where a party entitled to put in a further pleading desires to demur to part of the last pleading of the opposite party he shall combine such demurrer and other pleading.

5. If the party demurring desires to be at liberty to plead as well

as demur to the matter demurred to, he may, before demurring, apply to the Court or a judge for an order giving him leave to do so; and the Court or judge, if satisfied that there is reasonable ground for the demurrer, may make an order accordingly, or may reserve leave to him to plead after the demurrer is overruled, or may make such other order and upon such terms as may be just.

6. When a demurrer either to the whole or part of a pleading is delivered, either party may enter the demurrer for argument immediately, and the party so entering such demurrer shall on the same day give notice thereof to the other party. If the demurrer shall not be entered and notice thereof given within ten days after delivery, and if the party whose pleading is demurred to does not within such time serve an order for leave to amend, the demurrer shall be held sufficient for the same purposes and with the same result as to costs as if it had been allowed on argument.

7. While a demurrer to the whole or any part of a pleading is pending, such pleading shall not be amended, unless by order of the Court or a judge; and no such order shall be made except on payment of the costs of the demurrer.

8. Where a demurrer to the whole or part of any pleading is allowed upon argument, the party whose pleading is demurred to shall, unless the Court otherwise order, pay to the demurring party the costs of the demurrer.

9. If a demurrer to the whole of a statement of claim be allowed, the plaintiff, subject to the power of the Court to allow the statement of claim to be amended, shall pay to the demurring defendant the costs of the action, unless the Court shall otherwise order.

10. Where a demurrer to any pleading or part of a pleading is allowed in any case not falling within the last preceding rule, then (subject to the power of the Court to allow an amendment) the matter demurred to shall, as between the parties to the demurrer, be deemed to be struck out of the pleadings, and the rights of the parties shall be the same as if it had not been pleaded.

11. Where a demurrer is overruled the demurring party shall pay to the opposite party the costs occasioned by the demurrer, unless the Court shall otherwise direct.

12. Where a demurrer is overruled the Court may make such order and upon such terms as to the Court shall seem right for allowing the demurring party to raise by pleading any case he may be desirous to set up in opposition to the matter demurred to.

13. A demurrer shall be entered for argument by delivering to the proper officer a memorandum of entry in the Form No. 29 in Appendix (C).

The procedure as to demurrers is fully set out in the above rules. When the facts alleged in the pleadings show no cause of action or ground of defence in law, it is well to demur. But if one part of a pleading is demurrable and another part is good in law and raises a question of fact which will ultimately have to be decided irrespective of the demurrer, then it is scarcely advisable to demur. If the case can be decided by demurrer as first mentioned, the Court will order the hearing to be postponed, that the point may be properly raised by demurrer before the question of fact is gone into (*The Horlock*, 2 L. R. Ad. D. 243; 36 L. T. N. S. 622).

The plaintiff and defendant should each deliver their points for argument—that is, the legal grounds on which they respectively rely—to the registry for the use of the Court at the hearing (*The Anna*, 1 L. R. Ad. D. 253 (255); 45 L. J. Ad. 98).

ORDER XXIX.

DEFAULT OF PLEADING.

- | | |
|---------------------------------------|--|
| <p>Default of pleading.</p> | <p>1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court or a judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the Court or judge may, if no statement of claim have been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as to the Court or judge shall seem just.</p> |
| <p>When liquidated demand.</p> | <p>2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for that purpose, deliver a defence or demurrer, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed, with costs.</p> |
| <p>Several defendants.</p> | <p>3. When in any such action as in the last preceding rule mentioned there are several defendants, if one of them make default as mentioned in the last preceding rule, the plaintiff may enter final</p> |

judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.

These rules do not apply to an action *in rem* (*The Sfactoria*, 2 L. R. Ad. D. 3; 35 L. T. N. S. 431). For the procedure in such actions, see *post*, rr. 10 and 11.

10. In all other actions than those in the preceding rules of this Proceed-
order mentioned, if the defendant make default in delivering a ^{ings in} defence or demurrer, the plaintiff may set down the action on motion ^{default of} for judgment, and such judgment shall be given as upon the state- ^{pleading} ment of claim the Court shall consider the plaintiff to be entitled to. ^{in action} *in rem*.

11. Where, in any such action as mentioned in the last preceding rule, there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants.

The judge of the Admiralty Division decided (*The Sfactoria*, 2 L. R. Ad. D. 3; 35 L. T. N. S. 431) that Rule 2 of this Order does not apply to an Admiralty action *in rem*, where there was a claim for a liquidated sum. It would appear, therefore, that in an action *in rem*, in practice the cause should be set down for hearing and proofs be brought into the registry, and the same procedure be adopted as under O. xiii. (r. 10, substituted rule), or that the Court should be prayed for a decree on motion according to the allegations in the statement of claim, under O. xl., r. 1, the judge under O. xxxvii., r. 1. having previously on application allowed the evidence to be taken on affidavit. The tenor of the reported judgment in the above case leads to this opinion, but the practice on this point cannot be considered as yet quite settled, as such cases are very rare.

12. If the plaintiff does not deliver a reply or demurrer, or any party Non-de-
does not deliver any subsequent pleading, or a demurrer, within the ^{livery of}

reply or demurrer. period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and the statements of fact in the pleading last delivered shall be deemed to be admitted.

Application for judgment. 13. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the Court or a judge for such judgment, if any, as upon the pleadings he may appear to be entitled to. And the Court may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties.

Judgment by default. 14. Any judgment by default, whether under this order or under any other of these rules, may be set aside by the Court or a judge, upon such terms as to costs or otherwise as such Court or judge may think fit.

ORDER XXX.

PAYMENT INTO COURT IN SATISFACTION.

Payment into Court in satisfaction of claim. 1. Where any action is brought to recover a debt or damages, any defendant may at any time after service of the writ, and before or at the time of delivering his defence, or by leave of the Court or a judge at any later time, pay into Court a sum of money by way of satisfaction or amends. Payment into Court shall be pleaded in the defence, and the claim or cause of action in respect of which such payment shall be made shall be specified therein.

2. Such sum of money shall be paid to the proper officer, who shall give a receipt for the same. If such payment be made before delivering his defence the defendant shall thereupon serve upon the plaintiff a notice that he has paid in such money, and in respect of what claim, in the Form No. 5 in Appendix (B)¹ hereto.

3. Money paid into Court as aforesaid may, unless otherwise ordered by a judge, be paid out to the plaintiff, or to his solicitor on the written authority of the plaintiff. No affidavit shall be necessary to verify the plaintiff's signature to such written authority unless specially required by the officer of the Court.

4. The plaintiff, if payment into Court is made before delivering a defence, may within four days after receipt of notice of such payment, or if such statement is first stated in a defence delivered then may, before reply, accept the same in satisfaction of the causes of action in respect of which it is paid in; in which case he shall give notice to the defendant in the Form No. 6 in Appendix (B)¹ hereto, and shall

¹ App. IV., p. clxxvi.

be at liberty, in case the sum paid in is accepted in satisfaction of the entire cause of action, to tax his costs, and, in case of non-payment within forty-eight hours, to sign judgment for his costs so taxed.

The practice of tendering a certain sum in satisfaction of Tender. the plaintiff's claim has long been in use in the Court of Admiralty. For mere payment of money in satisfaction the practice formulated by the above rule might be employed, but the original Admiralty practice as to tenders is still in use. The solicitor of the defendant obtains a receivable order at the registry, which authorizes him to pay the sum he proposes to tender into the Bank of England to the account of the registrar. This order and the money having been left at the bank, a receipt for such sum is received there, a copy of which, together with a notice that the money has been paid into the bank and is tendered to the plaintiff, should be served on his solicitor. Such notice should include an offer to pay costs up to the date of tender, or it should state that the tender relates to the claim only, and give reasons why costs are not also tendered, and refer the question concerning them to the Court (*The Hickman*, 3 L. R. Ad. 15; 39 L. J. Ad. 7; *The Thracian*, 3 L. R. 504). For Form of Tender, see App. V., p. cci. The sum tendered will not, however, be paid out until the conclusion of the suit (*The Annie Childs*, Lush. 509), and a tender should be pleaded by the defendant in his defence. On an appeal from the Cinque Ports Commissioners, the defendant may tender a sum, which must be refused or accepted by the plaintiff (*The Annette*, 4 L. R. Ad. 9; 42 L. J. Ad. 13). As to costs, see *post*, O. lv., Tender.

ORDER XXXI.

DISCOVERY AND INSPECTION.

1. The plaintiff may, at the time of delivering his statement of Discovery, claim, or at any subsequent time not later than the close of the plead- Time for

delivering
interrogations.

ings, and a defendant may, at the time of delivering his defence, or at any subsequent time not later than the close of the pleadings, without any order for that purpose, and either party may at any time, by leave of the Court or a judge, deliver interrogatories in writing for the examination of the opposite party or parties, or any one or more of such parties, with a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer : Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose.

Rule 1 of this Order regulates the time at which interrogatories should be delivered. It has been laid down that as a general rule the plaintiff ought not to deliver his interrogatories before the delivery by the defendant of the statement of defence (*Mercier v. Cotton*, 1 L. R. Q. B. D. 442; 46 L. J. Q. B. 184); nor the defendant administer his interrogatories before he has delivered his statement of defence (*Disney v. Longbourne*, 2 L. R. Ch. D. 774; 45 L. J. Ch. 532). If very strong reasons were given, interrogatories might be allowed at an earlier period than the above, as in *The Murillo*, 28 L. T. N. S. 374, when the defendant appeared, stating he was "improperly sued as one of the owners of the ship." In actions for damage by collision, interrogatories ought not to be delivered seeking for information which should be disclosed by the Preliminary Act (*The Biola*, 34 L. T. N. S. 185; 24 W. R. 524).

2. The Court in adjusting the costs of the action shall at the instance of any party inquire or cause inquiry to be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing master of the Court or judge that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

3. Interrogatories may be in the Form No. 7 in Appendix (B) hereto, with such variations as circumstances may require.

See App. IV.; and as to costs, see further, App. II., p. cxxii.

4. If any party to an action be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply at chambers for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly. Corporations.

5. Any party called upon to answer interrogatories, whether by himself or by any member or officer, may, within four days after service of the interrogatories, apply at chambers to strike out any interrogatory, on the ground that it is scandalous or irrelevant, or is not put bonâ fide for the purposes of the action, or that the matter inquired after is not sufficiently material at that stage of the action, or on any other ground. And the judge, if satisfied that any interrogatory is objectionable, may order it to be struck out. Striking out interrogatories.

This rule regulates the manner of interrogating, and points out the reasons for which an interrogatory may be struck out. It has been laid down as a principle of practice that interrogatories ought to be such as tend bonâ fide to support the case of the interrogator and to favour a complete inquiry into the truth of the issue which is before the Court (*The Mary or Alexandria*, 2 L. R. Ad. 312; 18 L. T. N. S. 891). Among interrogatories which are objectionable, it has been held that those, the answers to which would tend to render the answerer liable to criminal proceedings must be included (*The Mary or Alexandria*, *supra*), also those which seek to discover on what evidence the opposite side will rely (*The Commissioners of Sewers v. Glass*, 15 L. R. Eq. 302; 42 L. J. Ch. 345).

6. Interrogatories shall be answered by affidavit, to be filed within ten days, or within such other time as a judge may allow. Answers.

7. An affidavit in answer to interrogatories shall, unless otherwise ordered by a judge, if exceeding ten folios, be printed and may be in the Form No. 8 in Appendix (B) hereto, with such variations as circumstances may require.

8. Any objection to answering any interrogatory may be taken, and the ground thereof stated in the affidavit.

9. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as

insufficient shall be determined by the Court or a judge on motion or summons.

10. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further either by affidavit or by *visâ voce* examination, as the judge may direct.

A person interrogated must answer according to the best of his knowledge, belief, and information. If he is unable to answer a question he must say so with particularity, and that will be a sufficient answer (*The Minnehaha*, 3 L. R. Ad. 148 (152); 23 L. T. N. S. 747), otherwise a further or better answer will be required of him.

As to the use of these answers as evidence at the hearing, see *post*, r. 23.

**Produc-
tion of
docu-
ments.**

11. It shall be lawful for the Court or a judge at any time during the pendency therein of any action or proceeding, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such action or proceeding, as the Court or judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

12. Any party may, without filing any affidavit, apply to a judge for an order directing any other party to the action to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question in the action.

These two rules enable a party to obtain the production of documents relating to the action or to discover first of all what documents the other party to the action may possess. Having regard to J. A. 1873, s. 25, sub-s. 11, the rules of equity must govern the practice in this matter. Every document asked for must be produced, unless it is protected from being seen on the ground of privilege (*Bustros v. White*, 1 L. R. Q. B. D. 422; 45 L. J. Q. B. 642). And the right to discovery extends to every document

which may throw light on the case (*Hutchinson v. Glover*, 1 L. R. Q. B. D. 138 ; 45 L. J. Q. B. 120).

But in an action against the Queen's ships, the Court will not order the commander's reports to the Admiralty to be produced (*H.M.S. Bellerophon*, 44 L. J. Ad. 5 ; 31 L. T. N. S. 756).

Upon oath means an affidavit in which the documents must be described.

13. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which, if any, of the documents therein mentioned he objects to produce, and it may be in the Form No. 9 in Appendix (B) hereto, with such variations as circumstances may require.

See App. IV.

14. Every party to an action or other proceeding shall be entitled, ^{Notice to} at any time before or at the hearing thereof, by notice in writing, ^{produce.} to give notice to any other party, in whose pleadings or affidavits reference is made to any document to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof ; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action or proceeding, unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the action, or that he had some other sufficient cause for not complying with such notice.

15. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the Form No. 10 in Appendix (B) hereto.

16. The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in rule 13, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, and stating which (if any) of the documents he objects to produce, and

on what ground. Such notice may be in the Form No. 11 in Appendix (B) hereto with variations as circumstances may require.

17. If the party served with notice under rule 15 omits to give such notice of a time for inspection, or objects to give inspection, the party desiring it may apply to a judge for an order for inspection.

Rr. 15, 16 and 17 apply, it will be observed, to documents mentioned in the pleadings. In the case of foreign owners of a ship the times in r. 16 will be changed to a reasonable time, according to the distance which they may be from this country and to other circumstances (*The Emma*, 34 L. T. N. S. 742).

Inspection
of docu-
ments.

18. Every application for an order for inspection of documents shall be to a judge. And *except* in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party.

The principles applicable to rr. 11 and 12 of this order are in point as regards r. 18.

R. 18 is of service chiefly when documents have not been required to be produced or discovery made, and when one party has some knowledge of those in the possession of the other, otherwise, as a matter of fact, this rule is to all intents and purposes the same as r. 11, since if a party obtains the production of a document he is sure to be able to inspect it. But a party should always before proceeding to obtain an order for inspection request the opposite party to give him inspection, otherwise he is liable to be condemned in the costs of the motion (*The Memphis*, 3 L. R. Ad. 23; 18 W. R. 74). And an affidavit under rule 18 should state as distinctly as possible of what documents inspection is sought (*The Cordelia*, 28 L. T. N. S. 776), a case which is quite applicable to the above rule.

19. If the party from whom discovery of any kind or inspection objects to the same or any part thereof, the Court or a judge may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action, or that for any other reason it is desirable that any issue or question in dispute in the action should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

20. If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating may apply to the Court or a judge for an order to that effect, and an order may be made accordingly.

21. Service of an order for discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

22. A solicitor upon whom an order against any party for discovery or inspection is served under the last rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment.

23. Any party may, at the trial of an action or issue, use in evidence any one or more of the answers of the opposite party to interrogatories without putting in the others : Provided always, that in such case the judge may look at the whole of the answers, and if he shall be of opinion that any other of them are so connected with those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in.

Somewhat in the nature of discovery is the demand by one party from the other of particulars of matters mentioned in the pleadings. This is a common practice in the other divisions of the High Court, but is not very usual in the Admiralty Division. Such a demand will be generally refused, but it has been allowed where particulars were sought of damage to cargo for the purpose of admitting

some liability, and of damage to a ship which has been totally lost at sea (*The Wetterhorn*, 34 L. T. N. S. 587; 24 W. R. 324; *The N. P. Neilson*, 34 L. T. N. S. 588; 24 W. R. 324. But see *The Freedom*, 2 L. R. Ad. 346). Where a suit is brought for necessities or wages the plaintiff is bound to furnish accounts in the nature of before bringing such an action (*The Fleur de Lis*, 1 L. R. Ad. 39).

ORDER XXXII.

ADMISSIONS.

Admissions in pleadings of documents.

1. Any party to an action may give notice, by his own statement or otherwise, that he admits the truth of the whole or any part of the case stated or referred to in the statement of claim, defence, or reply of any other party.

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the action may be, unless at the hearing or trial the Court certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

3. A notice to admit documents may be in the Form No. 12 in Appendix (B) hereto.

4. An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents, and annexed to the affidavit, shall be sufficient evidence of such admissions.

The notice to admit should be given within a reasonable time before the hearing of the action.

ORDER XXXIII.

INQUIRIES AND ACCOUNTS.

The Court or a judge may, at any stage of the proceedings in a *Inquiries* cause or matter, direct any necessary inquiries or accounts to be made and or taken, notwithstanding that it may appear that there is some *accounts.* special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

The jurisdiction of the Court to go into accounts between co-owners of ships under A. C. Act 1862, s. 8, has already been pointed out, *ante*, Part I, p. 50. The above rule still further enlarges the jurisdiction of the Court. For example, in an action for wages by a master, in which complicated questions of accounts were arising, and where it might be doubtful if any sum was due, and where there was also another distinct ground of defence as misconduct, the Court might, under the above rule, order the accounts to be gone into before the further issue was tried.

Where it is necessary, in order to do full justice in a *References* cause, that matters of detail relating to accounts, or the *to regis-* assessment of damages, when something has been pronounced *trar and* to be due, should be investigated, it has been the immemorial practice to refer such matters to the registrar alone or assisted by merchants, that he may report thereon to the Court (and see A. C. Act 1861, s. 23); questions of law cannot therefore be referred (*The Ocean*, 10 Jur. 506). But where the amount in dispute is so small that the further expense consequent on the reference is not justifiable, or where the Court can with ease settle the matter itself, then the above rule is not followed (*The Eleanore*, Br. & L. 135; 33 L. J. Ad. 19). The reference may be for the purpose of carrying out the decree of the Court or of finding facts on which its judgment may be wholly or partially based. Thus it may be ordered by the judge,

after he has decided the main point in the action, such as whether a bottomry bond was valid or invalid or in the course of the action before the hearing of the cause.

Moreover, the matter may be referred with directions to the registrar to observe certain principles of law in his investigation (*The St. Cloud*, Br. & L. 3 (19)).

And where several actions have been consolidated one of such actions can be referred separately, if convenient, without any reference of the others (*The Helen R. Cooper*, 3 L. R. Ad. 339 ; 40 L. J. Ad. 46).

The order of reference is obtained at the time of the decree from the registrar, and thereupon the practice set out in the following rules from the A. C. R. 1859, must be followed.

The rules
as to
practice in
references.

107. The following rules shall apply to references by the judge to the registrar, whether the reference be to the registrar alone, or to the registrar assisted by one or by two merchants.

108. Within twelve days from the day when the order for the reference is made, the solicitor for the claimant shall file the claim and affidavits ; and within twelve days from the day when the claim and affidavits are filed, the adverse solicitor shall file his counter-affidavits.

109. From the filing of the counter-affidavits six days only shall be allowed for filing any further affidavits by either solicitor, save by order of the judge, or by permission of the registrar.

110. Within three days from the expiration of the time allowed for filing the last affidavits, the solicitor for the claimant shall file in the registry a notice, with the stamps for the reference affixed thereto, praying to have the reference placed on the list for hearing ; and, if he shall not do so, the adverse solicitor may apply to the Court to have the claim dismissed with costs.

111. At the time appointed for the reference, if either solicitor be present, the reference may be proceeded with ; but the registrar may adjourn the reference from time to time, as he may deem proper.

112. Witnesses may be produced before the registrar for examination, and the evidence shall, on the application of either solicitor, but at the expense, in the first instance, of the party on whose behalf the application is made, be taken down by a short-hand writer or reporter appointed by the Court, who shall be sworn faithfully to report the evidence ; and a transcript of the short-hand writer's or reporter's

notes, certified by him to be correct, shall be admitted to prove the oral evidence of the witnesses in an objection to the registrar's report.

113. Counsel may attend the hearing of any reference, but the expenses attending the employment of counsel shall not be allowed on taxation, unless the registrar shall be of opinion that the attendance of counsel was necessary.

114. The registrar may, if he think fit, report whether any and what part of the costs of the reference should be allowed, and to whom.

115. The solicitor for the claimant shall, within six days from the time when he has received a notice from the registry that the report is ready, take up and file the same in the registry.

116. If the solicitor for the claimant shall not take the steps prescribed in the next preceding rule, the adverse solicitor may take up and file the report, or may apply to the Court to have the claim dismissed with costs.

117. A solicitor intending to object to the registrar's report shall, within six days from the filing of the report, file in the registry a notice, a copy of which shall have been previously served on the adverse solicitor; and within a further period of twelve days he shall file his petition in objection to the report.

118. All the rules hereinbefore prescribed respecting the pleadings and proofs in a cause, and the printing thereof, shall, so far as they are applicable, apply to the pleadings, proofs, and printing in an objection to a report of the registrar.

The claim referred to in Rule 108 is a statement which comprises the several items of the claimant's demand. It must be headed in the same manner as a statement of claim, with the name and number of the cause, and so forth. The several items in the body of the claim should be clearly specified and numbered consecutively (see Precedent, App. V.); with the claim should be filed the receipts and vouchers which relate to it, and numbered so as to correspond with the items to which they refer. Notice of the day and time at which the hearing is fixed is sent from the registry to the solicitors engaged in the case. By r. 111 it will be seen that the registrar has full power to adjourn the hearing, and he will do so for any reasonable cause. But if the adjournment is rendered necessary through the carelessness of the applicant for such adjournment, he will

have to pay any costs which it may occasion (*The Kepler*, Lush. 201).

R. 112 permits witnesses to be examined *virâ voce* if necessary or desirable. As to costs, see *post* O. lv.; and as to fees, App. II. After the case has been heard, the registrar draws up his report, which contains, in important cases, the reasons of the decision which he has arrived at, annexing thereto in all cases a schedule which shows the several items allowed or disallowed. In some cases, where a question of law arises upon which the registrar desires the opinion of the Court, he can state a special case for this purpose (see *The John Bellamy*, 3 L. R. Ad. 129; 39 L. J. Ad. 28). Three courses may be followed after the report has been drawn up and notice thereof has been sent to the respective solicitors. (1) The plaintiff's solicitor may take up and file the report in the registry; or (2), the solicitor for the defendant may take it up or move the Court to dismiss the claim according to r. 116; or (3), either party, when the report has been filed, may proceed to object to it. R. 117 is then applicable. But after notice of objection the report may be brought before the Court in two ways. A petition in objection may be filed according to rr. 117 and 118, and to this and the subsequent pleadings the rules as to the form and manner of ordinary pleadings are applicable. For precedent, see App. VI.; the ordinary notice of trial and entry for hearing must take place, and the cause will then come on in its order (see *post* O. xxxvi).

Objections
to report.

On the other hand, if both parties consent, which written consent should be filed in the registry, the matter may be brought before the Court on motion. The procedure at the hearing of the petition is the same as at the hearing of an ordinary action. Fresh evidence will not be allowed unless the Court is satisfied that it could not by proper diligence and application have been produced before the registrar; and an application for this purpose must be supported by affidavits, stating precisely the character of the new evidence which

is required (*The Flying Fish*, Br. & L. 436 ; 34 L. J. Ad. 113 ; *The Thuringia*, 41 L. J. Ad. 20 ; 26 L. T. N. S. 446). No objection can be taken to any item which was not objected to before the registrar (*The Princess Helena*, Lush. 191 ; 30 L. J. Ad. 137). The whole burden of proof lies on the party who objects to the report (*The Gazelle*, 2 W. Rob. 285), for there is a strong presumption in favour of the correctness of the report (*The Sir George Seymour*, 1 Spk. 67), so that it requires strong reasons to induce the Court to reverse it. The Court may confirm the report, or allow all or some of the objections. In the latter case it may direct a second reference (*The Matchless*, 10 Jurist, 1017 ; *The Flying Fish*, ante), or send the report back for reconsideration as to the items which have been objected to, or itself make the alterations.

ORDER XXXIV.

QUESTIONS OF LAW.

1. The parties may, after the writ of summons has been issued, Special concur in stating the questions of law arising in the action in the ^{case}. form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

2. If it appear to the Court or a judge, either from the statement of claim or defence or reply or otherwise, that there is in any action a question of law, which it would be convenient to have decided before any evidence is given, or any question or issue of fact is tried, or before any reference is made to a referee or arbitrator, the Court or judge may make an order accordingly, and may direct such

question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

3. Every special case shall be printed by the plaintiff, and signed by the several parties or their solicitors, and shall be filed by the plaintiff. Printed copies for the use of the judges shall be delivered by the plaintiff.

4. No special case in an action to which a married woman, infant, or person of unsound mind is a party shall be set down for argument without leave of the Court or a judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true.

5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No. 13 in Appendix (B) hereto, and also if any married woman, infant, or person of unsound mind be a party to the action, producing a copy of the order giving leave to enter the same for argument.

A special case for the purpose of raising a question of law has hitherto been seldom used in the Court of Admiralty. But when convenient, this form of procedure may well be employed. R. 1 refers to a case started by consent of the parties; r. 2 by the Court, on the application of one of the parties. The application under r. 2 should be by a summons to show cause why the facts should not be stated in a special case, and the applicant should have an affidavit showing that no facts are in dispute in the action. The Court of Appeal has decided that an order may be made any time after the defendant has appeared, and even before the delivery of the statement of claim (*Metropolitan Board of Works v. The New River Co.*, 2 L. R. Q. B. 67; 36 L. J. Q. B. 183). For form of case, see *The Two Ellens*, 3 L. R. Ad. 345; 41 L. J. Ad. 33.

As to special case by registrar after a reference, see *ante*, Registrar and Merchants, O. xxxiii.

ORDER XXXV.

PROCEEDINGS IN DISTRICT REGISTRIES.

12. Order XXXV., rule 1, of the "Rules of the Supreme Court" is hereby annulled, and the following shall stand in lieu thereof :—

1. Where an action proceeds in the district registry all proceedings, except where by any of the rules of the Supreme Court it is otherwise provided, or the Court or a judge shall otherwise order, shall be taken in the district registry, down to and including final judgment, and every final judgment and every order for an account by reason of the default of the defendant or by consent shall be entered in the district registry in the proper book, in the same manner as a like judgment or order in an action proceeding in London would be entered in London.

Where an action proceeds in the district registry, final judgment shall be entered in such registry, unless the judge at the trial or the Court or a judge shall otherwise order.

2. Subject to the foregoing rules, where an action proceeds in the district registry the judgment and all such orders therein as require to be entered; except orders made by the district registrar under the authority and jurisdiction vested in him under these rules, shall be entered in London, and an office copy of every judgment and order so entered shall be transmitted to the district registry to be filed with the proceedings in the action.

3. Where an action proceeds in the district registry all writs of execution for enforcing any judgment or order therein shall issue from the district registry, unless the Court or a judge shall otherwise direct. Where final judgment is entered in the district registry costs shall be taxed in such registry unless the Court or judge shall otherwise order.

As to writs of execution, see Oo. xlii., xliii., *et seq.*

4. Where an action proceeds in a district registry the district registrar may exercise all such authority and jurisdiction in respect of the action as may be exercised by a judge at chambers, except such as by these rules a master of the Queen's Bench, Common Pleas, or Exchequer Divisions is precluded from exercising.

As to jurisdiction of registrar at chambers, see *post*, O. liv.

5. Every application to a district registrar shall be made in the same manner in which applications at chambers are directed to be made by these rules.

See O. liv., r. 1.

References to judge. 6. If any matter appears to the district registrar proper for the decision of a judge, the registrar may refer the same to a judge, and the judge may either dispose of the matter or refer the same back to the registrar with such directions as he may think fit.

Appeal from district registrar. 7. Any person affected by any order or decision of a district registrar may appeal to a judge. Such appeal may be made notwithstanding that the order or decision was in respect of a proceeding or matter as to which the district registrar had jurisdiction only by consent. Such appeal shall be by summons within four days after the decision complained of, or such further time as may be allowed by a judge or the registrar.

8. An appeal from a district registrar shall be no stay of proceedings unless so ordered by a judge or the registrar.

9. Every district registrar and other officer of a district registry shall be subject to the orders and directions of the Court or a judge as fully as any other officer of the Court, and every proceeding in a district registry shall be subject to the control of the Court or a judge, as fully as a like proceeding in London.

Removal of action from district registry. 11. In any action which would, under the foregoing rules, proceed in the district registry, any defendant may remove the action from the district registry as of right in the cases, and within the times, following :

Where the writ is not specially indorsed any defendant may remove the action as of right at any time after appearance, and before delivering a defence, and before the expiration of the time for doing so.

As to procedure, see *The General Birch*, 33 L. T. N. S. 792, 24 W. R. 24, *ante*, note to O. xii., r. 5.

By party intervening. 11a. In an Admiralty action in rem, any person who may have duly intervened and appeared may remove an action from a district registry as of right.

Procedure. 12. Any defendant desirous to remove an action as of right under rule 11 may do so by serving upon the other parties to the action, and delivering to the district registrar, a notice, signed by himself or his solicitor, to the effect that he desires the action to be removed to London, and the action shall be moved accordingly : Provided, that if

the Court or a judge shall be satisfied that the defendant giving such notice is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such Court or judge may order that the action may proceed in the district registry notwithstanding such notice.

13. In any case not provided for by the last two preceding rules, any party to an action proceeding in a district registry may apply to the Court or a judge, or to the district registrar, for an order to remove the action from the district registry to London, and such Court, judge, or registrar may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall seem just.

Any party to an action proceeding in London may apply to the Court or a judge for an order to remove the action from London to any district registry, and such Court or judge may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall seem just.

14. Whenever any proceedings are removed from the district registry to London, the district registrar shall transmit to the proper officer of the High Court of Justice all original documents (if any) filed in the district registry, and a copy of all entries in the books of the district registry of the proceedings in the action.

15. Every district registrar shall account for and pay over to the Treasury all moneys paid into Court at the registry of which he is registrar, in such manner and at such times as may be from time to time directed by the Treasury.

ORDER XXXVI.¹

TRIAL.

2. Actions shall be tried and heard either before a judge or judges, or before a judge sitting with assessors, or before a judge and jury, or before an official or special referee, with or without assessors.

An action is always tried in the Admiralty Division by the judge alone, or assisted by assessors. As to assessors, see J. A. ^{Trial of issue by judge and jury.}

¹ The portions of the following rules, which relate to trial by jury, have been omitted, as inapplicable to the practice in the Admiralty Division.

1873, s. 56, and *post*, r. 28. The Admiralty Division possesses no machinery for summoning jurors, but by 3 & 4 Vict. 65, ss 11-16, the Court of Admiralty had power to direct a trial by jury in London, or at the county assizes, of any specified issue. Such power was occasionally but rarely used (see *The Harriet*, 1 W. Rob. 439, where an issue was directed to try the existence of a custom). Under rr. 27 and 29 of this Order the judge of the Admiralty Division has a similar power; and, therefore, if it were desired to try an action by a judge and jury, application could be made to the judge under these rules, and the cause, if so tried, would, so far as the particular issue in dispute was concerned, continue under the procedure in use in the other division of the High Court.

As to referees, it would be quite feasible to employ them, but the registrar's or deputy-registrar's duties are very analogous to those intended of the official referees. As to references to registrar and merchants, see O. xxxiii.

**Time for
notice of
trial.**

3. Subject to the provisions of the following rules, the plaintiff may, with his reply, or at any time after the close of the pleadings, give notice of trial of the action.

4. Subject to the provisions of the following rules, if the plaintiff does not, within six weeks after the close of the pleadings, or within such extended time as a Court or judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial.

**Dismissal
of action
for want
of prosecution.**

4a. The defendant, instead of giving notice of trial, may apply to the Court or judge to dismiss the action for want of prosecution; and on the hearing of such application, the Court or a judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the Court or judge may seem just.

This rule is applicable if there is undue delay on the part of the plaintiff, and if the defendant have a counter-claim in such an action, having obtained the dismissal of the plaintiff's claim, he can move for judgment on his own counter-claim (*Aitken v. Dunbar*, 46 L. J. Ch. 489).

6. Subject to the provisions of the preceding rules, the Court or a judge may, in any action at any time or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the place or places for such trial or trials, and in all cases may order that one or more issues of fact be tried before any other or others.

9. Ten days' notice of trial shall be given, unless the party to whom it is given has consented to take short notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the Court or a judge. Ten days' notice of trial.
Short notice of trial shall be four days' notice.

10. Notice of trial shall be given before entering the action for trial. Notice of trial.

Notice of trial must be given to the opposite party, as to the time at which notice may be given (*ante*, r. 3, and as to length of notice, *ante*, r. 9). Under O. lvii., r. 7, which is specially applicable to Admiralty actions, the judge on summons or motion can dispense with notice of trial, or abridge it and fix an early day for the hearing of the cause.

10a. Unless within six days after notice of trial is given the cause shall be entered for trial by one party or the other, the notice of trial shall be no longer in force. Entry for trial.

11. Notice of trial shall not be or operate as for any particular sittings; but shall be deemed to be for any day after the expiration of the notice on which the action may come on for trial in its order upon the list.

As soon as notice has been given to the opposite side, the party who is desirous of having the action tried should enter his cause at the registry, where it will be placed on the list for hearing, and will then come on according to its position on the list, or according to the terms of any order made by the judge on application to him to fix a day for the hearing. Actions proceeding in district registries must be entered at such registries, and the papers are then forwarded to London. And as to fixing an early day for the trial, see note to preceding rule.

Counter-
manding
notice of
trial.

Entry of
action.

13. No notice of trial shall be countermanded, except by consent, or by leave of the Court or a judge, which leave may be given subject to such terms as to costs, or otherwise, as may be just.

14. If the party giving notice of trial (for London or Middlesex), omits to enter the cause for trial on the day of or day after giving notice of trial, the party to whom notice has been given may, unless the notice has been countermanded under the last rule, within four days, enter the action for trial.

17. The party entering the action for trial shall deliver to the officer two copies of the whole of the pleadings in the action, one of which shall be for the use of the judge at the trial. Such copies shall be in print, except as to such parts, if any, of the pleadings as are by these rules permitted to be written.

These pleadings must be delivered at the registry.

Non-ap-
pearance
of defen-
dant at
hearing.

18. If, when an action is called on for trial, the plaintiff appears, and the defendant does not appear, then the plaintiff may prove his claim, so far as the burden of proof lies upon him.

Non-ap-
pearance of
plaintiff.

19. If, when an action is called on for trial, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action, but if he has a counter-claim, then he may prove such claim so far as the burden of proof lies upon him.

Practice
at the
hearing.

At the hearing it is the practice to dispense with any opening statements, and to proceed at once to the evidence. Unless the case is one of great length or difficulty the costs of two counsel only on each side will be allowed on taxation. But in a salvage suit plaintiffs whose interests are adverse to each other may be represented by separate counsel (*The Scout*, 3 L. R. Ad. 514 n.; 41 L. J. Ad. 42).

The rule that the party on whom the burden of proof lies must begin is applicable to Admiralty actions. And after some diversity of practice it is now settled that in all damage causes, whether inevitable accident be pleaded or not, the plaintiff must begin (*The Otter*, 4 L. R. Ad. 203; 30 L. T. N. S. 43). Where there are rival salvors, and the actions have been consolidated, those have the right to begin who have first entered their causes (*The Morocco*, 24 L. T. N. S. 598).

When the evidence is given *viva voce*, the witnesses are examined by the counsel who call them, are cross-examined by the opposite counsel, and re-examined by their own counsel. But the counsel of rival salvors may cross-examine each other's witnesses on points as to which they are at issue (*The Morocco*, 24 L. T. N. S. 598). When the evidence is given on affidavits these have only to be read to the Court. After the evidence on both sides is concluded, the leading counsel for the plaintiff addresses the Court, who is followed by that of the defendant, and the counsel for the plaintiff has a right to reply. Should a point of law arise the Court will hear two counsel on each side.

At the conclusion of the trial, unless the judge defers his decision, he gives an absolute judgment or a judgment subject to a reference to the registrar and merchant (see *ante*, O. xxxi.). But in either case the decree will then be entered in the minute book by the registrar (see O. xli., and the remarks thereon¹).

Each witness during the hearing of the cause should be kept out of Court until his evidence is required. After each witness is sworn the solicitor who produces him should hand a slip of paper containing the name and number of the cause and the full name of the witness to the registrar. For fees payable, see App. II., p. cxxix.

21. The judge may, if he think it expedient for the interests of justice, postpone or adjourn the trial for such time and upon such terms, if any, as he shall think fit.

28. Trials with assessors shall take place in such manner and upon such terms as the Court or a judge shall direct. Trials with assessors.

The assessors of the judge, where he requires advice on the nautical facts of the case, are two of the Trinity masters; their duty is solely to advise, and the responsibility for the decision of the case rests wholly with the

¹ Rules 24, 25, 29a-34 of this Order are not applicable to trials in the Admiralty Division.

judge (*The Magna Charta*, 25 L. T. N. S. 512 (P. C.)). In actions of damage and salvage their attendance may be obtained as a matter of course by filing a præcipe in the registry requesting their attendance (for fees payable see App. II.). In other than these actions their attendance will only be granted after application to the judge; in salvage cases the practice has been assimilated to that in actions for damage by collision. Where one party applies the judge will, in practice, exercise his discretion as to granting the request (*The Houthandel*, 1 Spk. 27). A fee of two guineas a day is paid to each of the assessors. In damage causes where each party is held to blame, the fees are divided between the two parties.

Either party may apply to the Court for an order permitting the assessors to view any property, the inspection of which may be material to the issue in dispute (A. C. A. 1861, s. 18); in so doing they should if necessary be accompanied by the solicitors of the parties (*The Germania*, 37 L. J. Ad. 59; 19 L. T. N. S. 20).

27. The Court or a judge may, if it shall appear either before or at the trial that any issue of fact can be more conveniently tried before a jury, direct that such issue shall be tried by a judge with a jury.

29. In any cause the Court or a judge of the division to which the cause is assigned may, at any time or from time to time, order the trial and determination of any question or issue of fact, or partly of fact and partly of law, by any commissioner or commissioners appointed in pursuance of 29th section of the said Act, or at the sittings to be held in Middlesex or London, and such question or issue shall be tried and determined accordingly.

ORDER XXXVII.

EVIDENCE GENERALLY.

Evidence. 1. In the absence of any agreement between the parties, and subject to these rules, the witnesses to the trial of any action or at any assess-

ment of damages, shall be examined *vidé voce* and in open court, but the Court or a judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or judge may think reasonable, or that any witness whose attendance in Court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a commissioner or examiner; provided that where it appears to the Court or judge that the other party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

It is now the rule that witnesses are examined *vidé voce* before the Court, unless (a) the parties consent that the evidence shall be taken on affidavit, or unless (b) the judge on application orders the evidence to be taken by affidavit, or the witness to be examined before a commissioner or examiner. Such a consent as above mentioned must be in writing (*The New Westminster Brewery Co. v. Hannah*, 1 L. R. Ch. D. 278; 24 W. R. 137). As to evidence on affidavit, see *post*, O. xxxviii; and as to examination of witnesses before an officer of the Court, see *post*, r. 4 of this order.

The attendance of witnesses and the production of documents, &c., is enforced by means of the usual writs of *subpœna ad testificandum* and *subpœna duces tecum* (see 3 & 4 Vict. c. 65, s. 9). By A. C. Act, 1861, s. 21, service in any part of Great Britain and Ireland of either of these writs issued under the seal of the Court of Admiralty was as effectual as if the same had been served in England or Wales; this would apply to the Admiralty Division. The writ is issued from the registry.

The costs of material witnesses, who, though in attendance at the hearing have not been called, are allowed on taxation (*The Biddick*, 38 L. J. Ad. 24; 19 L. T. N. S. 705). But the costs of attendance of a receiver of wreck will not be allowed when certified copies of the statements made

before him would have answered all needful purposes (*The Cromwell*, 3 L. R. Ad. 316).

Evidence
on affi-
davit.

2. Upon any motion, petition, or summons evidence may be given by affidavit; but the Court or a judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

3. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

The principles of evidence stated in this rule must be strictly adhered to.

Examina-
tion of
witnesses
before
officer
of court
or other
person.

4. The Court or a judge may, in a cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before any officer of the Court, or any other person or persons, and at any place, of any witness or person, and may order any deposition so taken to be filed in the Court, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the Court or a judge may direct.

Proceedings under this rule are still regulated by such of the A. C. R. 1859, as are applicable to the new procedure. They are as follows :—

88. The solicitor producing a witness shall, twenty-four hours at least before the witness is examined, serve a notice upon the adverse solicitor, stating the title and number of the action, the name and address of the witness, the parts of the pleadings in which he is to be examined, the name of the examiner, the name of the interpreter, if any, and the day, hour, and place appointed for the examination.

90. The examination-in-chief, cross-examination, and re-examination of witnesses examined before an examiner or a commissioner shall be conducted either by counsel or by the solicitors or their substitutes; or the examination-in-chief may, on the application of the solicitor producing the witnesses, be conducted by the examiner or commissioner himself. In any case, the examiner or commissioner may put any questions to the witnesses, for the purpose of eliciting the truth, as to him shall seem fit.

91. The fees of one counsel may be allowed by the registrar on taxation for attending the examination of witnesses before an examiner or commissioner.

92. When the examination of any witness is completed, the examiner or commissioner shall read over the deposition to the witness, who shall thereupon sign the same; and the examiner or commissioner shall certify at the foot thereof that the deposition has been read over audibly and distinctly to the witness, and that he has acknowledged the same to be true.

93. If the witness refuse to sign his deposition, the examiner or the commissioner shall certify at the foot of the deposition that the witness has so refused, and that the deposition is in accordance with the evidence given by the witness; and the deposition of the witness may thereupon be used at the hearing of the cause.

94. The judge may, on the application of either solicitor in the cause, but at the expense, in the first instance, of the party on whose behalf the application is made, direct the evidence of the witnesses to be taken down by a short-hand writer or reporter appointed by the Court, who shall be previously sworn faithfully to report the evidence; and a transcript of the short-hand writer's or reporter's notes, certified by him to be correct, shall be admitted to prove the oral evidence of the witnesses.

95. When the examinations of the witnesses have been completed, the examiner or commissioner shall file the depositions of the witnesses in the registry, with a special return setting forth the whole of his proceedings.

ORDER XXXVIII.

EVIDENCE BY AFFIDAVIT.

1. Within fourteen days after a consent for taking evidence by affidavit as between the plaintiff and the defendant has been given, or within such time as the parties may agree upon, or a judge in chambers may allow, the plaintiff shall file his affidavits, and deliver to the defendant or his solicitor a list thereof. Evidence
by affi-
davit.

2. The defendant, within fourteen days after delivery of such list, or within such time as the parties may agree upon, or a judge in chambers may allow, shall file his affidavits, and deliver to the plaintiff or his solicitor a list thereof. Time.

3. Within seven days after the expiration of the said fourteen days

Cross ex-
amination.

or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof.

4. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party, may serve upon the party by whom such affidavit has been filed, a notice in writing, requiring the production of the deponent for cross-examination before the Court at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

5. The party to whom such notice as is mentioned in the last preceding rule is given, shall be entitled to compel the attendance of the deponent for cross-examination, in the same way as he might compel the attendance of a witness to be examined.

6. When the evidence in any action is, under this order, taken by affidavit, such evidence shall be printed, and the notice of trial shall be given at the same time or times after the close of the evidence, as in other cases is by these rules provided after the close of the pleadings.

The filing mentioned in r. 1 is at the registry.

ORDER XL.

MOTION FOR JUDGMENT.

Motion
for judg-
ment.

1. Except where by the Act or by these rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion for judgment.

See remarks to O. xiii. (r. 10), and O. xxix. This rule, except, possibly, under the orders here referred to, has but little application to proceedings in the Admiralty Division.

9. No action shall, except by leave of the Court or a judge, be set down on motion for judgment after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do. Time for setting down.

10. Upon a motion for judgment, or for a new trial, the Court may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit.

11. Any party to an action may, at any stage thereof, apply to the Court or a judge for such order as he may, upon any admissions of fact in the pleadings, be entitled to, without waiting for the determination of any other question between the parties. Order on admission of fact. The foregoing rules of this Order shall not apply to such applications, but any such application may be made by motion, so soon as the right of the party applying to the relief claimed has appeared from the pleadings. The Court or a judge may, on any such application, give such relief, subject to such terms, if any, as such Court or judge may think fit.

The exercise of the power vested in the judge in this last rule is wholly in his discretion (*Mellor v. Sidebottom*, 5 L. R. Ch. D. 342; 46 L. J. Ch. 398; and for examples of the working of this rule see *Turquand v. Wilson*, 1 L. R. Ch. D. 85; 45 L. J. Ch. 104; and *Martin v. Gale*, 36 L. T. N. S. 357). This rule might be found useful in actions of possession, in suits between co-owners, and in actions as to mortgages.

ORDER XLI.

ENTRY OF JUDGMENT.

1. Every judgment shall be entered by the proper officer in the book to be kept for the purpose. Entry of judgment. The party entering the judgment shall deliver to the officer a copy of the whole of the pleadings in the action other than any petition or summons; such copy shall be

in print, except such parts (if any) of the pleadings as are by these rules permitted to be written : Provided that no copy need be delivered of any pleading a copy of which has been delivered on entering any previous judgment in such action. The Forms in Appendix (D) hereto may be used, with such variations as circumstances may require.

2. Where any judgment is pronounced by the Court or a judge in Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, and the judgment shall take effect from that date.

3. In all cases not within the last preceding rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date.

4. Where under the Act or these rules, or otherwise, it is provided that any judgment may be entered or signed upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required he shall enter judgment accordingly.

5. Where by the Act or these rules, or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order or certificate sealed with the seal of the Court, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly.

The decree.

Judgment *eo nomine* is not entered in the Admiralty Division, but the decree of the judge is entered in a minute book. The last part of r. 1 of this order is, therefore, not applicable. R. 3 would only apply in the very rare case of a judgment by default in an action *in personam*, when, it would seem, that the claim in the writ or statement of claim would take the place of the decree.

In actions of salvage, wages, and necessaries, interest at the rate of 4 per cent. runs on the amount awarded from the date of entering judgment, and such amount is a judgment debt within O. xlii., r. 14, since by s. 76, J. A. 1873, the statute 1 & 2 Vict. c. 110, s. 17, applies to Admiralty actions (*The Jones Brothers*, 37 L. T. N. S. 164).

As to interest in damage and bottomry actions, see *ante*, Part I., damage and bottomry.

The following remarks describe the practice subsequent to the decree:—When judgment is pronounced for a claim in an action *in rem* where bail has not been given, the parties usually settle the matter out of Court, and consent to a release of the *res*, otherwise it will be sold and the proceeds paid by the marshal into the registry. If it is necessary to sell the property, a commission for appraisal and sale must be obtained at the registry in pursuance of the decree. If the *res* has already been appraised a further appraisal is unnecessary; and as to official appraisal, see *ante*, O. v., r. 11, p. 113, and in that case a commission for sale only is required upon the filing of the usual *præcipe*. The commission, with a *præcipe* for execution, must be left at the marshal's office.

Judgment
in action
in rem
where bail
has not
been
given.

The following rules from A. C. R. 1859 are then applicable :—

124. Every commission for the appraisal or sale of property under the decree of the Court shall, unless the judge shall otherwise order, be executed by the marshal or his substitutes.

125. The marshal shall pay into Court the gross proceeds of sale of any property which shall have been sold by him, and shall, at the same time, bring into the registry the account of sale, with vouchers in support thereof for taxation by the registrar.

126. Any person interested in the proceeds may be heard before the registrar on the taxation of the marshal's account of expenses, and an objection to the taxation shall be heard in the same manner as an objection to the taxation of a solicitor's bill of costs.

The marshal fixes the time and place of sale, which is duly made known by advertisement, and at such time as announced the property is sold by auction. But if it is to the interest of the parties concerned, the marshal may sell the *res* by private contract. If at the auction the biddings do not reach the appraised value, the property cannot be sold, but an order must be obtained from the judge for leave to sell it for a smaller sum. On the production of a bill of sale by the marshal, and an office copy of the order of the Court, the purchaser will obtain a new register of the

ship and a perfect title to the property, whilst any one who may have claims against it must enforce them against the proceeds in the registry.

Where one party obtains the sale of a vessel which is for the benefit of several claimants, the costs of such sale are the first charge on the proceeds (*The Panthea*, 25 L. T. N. S. 389).

Where bail
has been
given.

Where bail has been given, if the amount for which the decree is made is not paid, together with the taxed costs, into the registry, the plaintiff must obtain an order from the judge, ordering the defendant and his sureties to pay the amount by a certain day. If this is not done, the plaintiff should sue out a writ of execution in the shape of a *fi. fa.*, under O. xlii., r. 15, or for a writ of attachment under O. xlii. and O. xlv. For the procedure as to these writs, see the above Orders.

Where the property has not been arrested nor bail given, the procedure will be the same as in the last mentioned case, except that there are no sureties to proceed against.

Where a reference has been ordered, proceedings to enforce payment cannot be taken until the report is filed.

Where the property has been sold and the proceeds paid into Court before the hearing, it is only necessary, when judgment is pronounced for the plaintiff, to obtain an order for the payment out of the sum which is awarded (see *infra*.)

Payment
of pro-
ceeds.

The rank which claims have against the proceeds in the registry has already been pointed out (Part I. Ch. 5), but if claimants are *in pari conditione*, the one who has first obtained a decree is entitled to rank first against such proceeds (*The Markland*, 3 L. R. Ad. 340 ; 24 L. T. N. S. 596).

To obtain payment of the money out of Court, r. 128 A. C. R. 1859, comes into force. "All orders for the payment of money out of Court shall be signed by the judge." To obtain an order application should be made in Chambers or in Court, and a minute and the order being filed in the registry, the money will be paid out. If any person desires

to prevent the payment out of the proceeds, he must enter a caveat against the payment out in the same manner as against a release from arrest, for procedure see (*ante*, O. v., p. 117).

If there is any balance remaining in the registry after payment of the several claimants it will be paid out according to the usual practice by means of an order of the judge. As soon as a specified sum has been ordered to be paid to a particular claimant, it becomes his property, so as to be available as assets for his creditors subject to any lien which there may be on it, as that of a solicitor for his costs, who has the first claim on the fund, unless he fails to take proper means to assert his rights (*The Olive*, Swa. 423; *The Albert Crosby*, Lush. 101; *The Jeff Davis*, 2 L. R. Ad. 1).¹

Where judgment is pronounced for a plaintiff in an action *in personam*, the methods of enforcing such judgment by execution, &c., which are common to all divisions of the High Court, may be employed (see *post*, O. xlii., *et seq.*)

Where judgment is given for the plaintiff in an action of possession, a præcipe for a release must be filed in the registry and the same procedure used as already mentioned in regard to release (see *ante*, O. v., r. 11, p. 116, and as to adding parties so as to obtain costs, see O. xvi., r. 13).

If judgment is given for the defendant when the ship has been arrested, the same procedure is applicable as mentioned in the last paragraph, and if bail has been given the Court makes as part of the decree an order dismissing the bail.

When a decree has been made the Court has power, whilst the subject matter of the action is within its jurisdiction, to alter such decree if an obvious error has been committed by it in regard to such decree or order, and it has been brought to its notice as quickly as possible (*The Monarch*, 1 W. Rob. 21; *The Markland*, 3 L. R.

¹ These cases partly raised the question of the rights of holders of garnishee orders over a fund under the control of the Court, but they seem to show that if these orders were properly brought to the notice of the Court, the claim to the fund will be recognised.

Ad. 340; 24 L. T. N. S. 596), but it will only rescind it with reluctance (*The Glenburn*, Br. and L. 62.)

ORDER XLII.

EXECUTION.

Execution. 1. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money of any Court whose jurisdiction is transferred by the said Act might have been enforced at the time of the passing thereof.

2. A judgment for the payment of money into Court may be enforced by writ of sequestration, or in cases in which attachment is authorized by law, by attachment.

This rule has considerably enlarged the powers of the Admiralty Division. A writ of attachment was formerly the only remedy used in the Admiralty Court. Of course, as shown by the notes to the preceding order, where the *res* is in the power of the Court writs of execution are unnecessary.

The recovery of property. 4. A judgment for the recovery of any property other than land or money may be enforced :
 By writ for the delivery of the property :
 By writ of attachment :
 By writ of sequestration.

See O. xlvii., O. xlix.

5. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal.

Meaning of "writ of execution." 6. In these rules the term "writ of execution" shall include writs of fieri facias, capias elegit, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party" shall mean the issuing of any such process against his person or property as under the preceding rules of this order shall be applicable to the case.

Judgment in fulfilment of contingency. 7. Where a judgment is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against

whom he is entitled to relief, apply to the Court or a judge for leave to issue execution against such party. And the Court or judge may, if satisfied that the right to relief has arisen according to the terms of the judgment, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried.

8. Where a judgment is against partners in the name of the firm, ^{Against} execution may issue in manner following : ^{partners.}

- (a.) Against any property of the partners as such :
- (b.) Against any person who has admitted on the pleadings that he is, or has been adjudged to be a partner :
- (c.) Against any person who has been served, as a partner, with the writ of summons, and has failed to appear :

If the party who has obtained judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a judge for leave so to do ; and the Court or judge may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

9. No writ of execution shall be issued without the production to ^{Issue of} the officer by whom the same should be issued, of the judgment upon ^{writ} which the writ of execution is to issue, or an office copy thereof, showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the judgment creditor to execution.

A direction by the Court is equivalent to a formal judgment (*Bolton v. Bolton*, 3 L. R. Ch. D. 276 ; 35 L. T. N. S. 358 ; and see *post*, r. 20).

10. No writ of execution shall be issued without the party issuing ^{Præcipe.} it, or his solicitor, filing a *præcipe* for that purpose. The *præcipe* shall contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firms against whose goods, the execution is to be issued ; and shall be signed by or on behalf of ¹ the solicitor of the party issuing it, or by the party issuing it if he do so in person. The forms in Appendix (E) hereto may be used, with such variations as circumstances may require.

¹ These words were added by r. 17. Rules of June, 1876.

Indorse-
ment of
writ.

11. Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's or defendant's residence, if any such there be.

Date of
writ.

12. Every writ of execution shall bear date of the day on which it is issued. The forms in Appendix (F) hereto may be used, with such variations as circumstances may require.

Interest on costs runs from the date of the registrar's allocatur of taxation (see *Schroder v. Clough*, 46 L. J. C. P. 365; and *The Jones Brothers*, 37 L. T. N. S. 164).

13. In every case of execution the party entitled to execution may levy the poundage, fees and expenses of execution, over and above the sum recovered.

Indorse-
ment of
direction.

14. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of 4l. per cent. per annum from the time when the judgment was entered up, provided that in cases where there is an agreement between the parties that more than 4l. per cent. interest shall be secured by the judgment, then the indorsement may be accordingly to levy the amount of interest so agreed.

The sheriff is the person to whom in an action in the Admiralty Division the writ is directed.

Time for
taking out
writs of
execution.

15. Every person to whom any sum of money or any costs shall be payable under a judgment, shall immediately after the time when the judgment was duly entered, be entitled to sue out one or more writ or writs of fieri facias or one or more writ or writs of elegit to enforce payment thereof, subject nevertheless as follows :—

- (a.) If the judgment is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period.
- (b.) The Court or judge at the time of giving judgment, or the Court or a judge afterwards, may give leave to issue execution before, or may stay execution until any time after the expiration of the periods hereinbefore prescribed.

As to stay of execution on appeal, see *post*, O. lviii., r. 16. In one case a stay of execution was granted and the money ordered to be brought into Court and invested in Exchequer Bonds (*The Cybele*, 37 L. T. N. S. 165).

16. A writ of execution if unexecuted shall remain in force for Time. one year only from its issue, unless renewed in the manner herein-after provided ; but such writ may, at any time before its expiration, by leave of the Court or a judge, be renewed, by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the Court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his attorney, and bearing the like seal of the Court ; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

17. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal, as in the last preceding rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

18. As between the original parties to a judgment, execution may issue at any time within six years from the recovery of the judgment.

19. Where six years have elapsed since the judgment, or any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court or a judge for leave to issue execution accordingly. And such Court or judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties, shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or judge may impose such terms, as to costs or otherwise, as shall seem just.

Orders
equivalent
to judg-
ment.

20. Every order of the Court or a judge, whether in an action, cause, or matter, may be enforced in the same manner as a judgment to the same effect.

21. In cases other than those mentioned in rule 18, any person not being a party in an action who obtains any order, or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the action; and any person not being a party in an action against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to the action.

Relief
as to
execution.

22. No proceeding by *audita querela* shall hereafter be used; but any party against whom judgment has been given may apply to the Court or a judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or judge may give such relief and upon such terms as may be just.

Saving
rules.

23. Nothing in any of the rules of this Order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever.

24. Nothing in this Order shall affect the order in which writs of execution may be issued.

Proceed-
ings under
Debtors
Act, 1869.

If a person against whom judgment has gone has the means to pay and will not do so, the Debtors Act, 1869, 32 & 33 Vict. c. 62, is applicable.

The following rules were, on March, 1874, made for the purposes of carrying out the provisions of this Act:—

I. All applications to commit to prison under the Debtors Act, 1869, shall, in the first instance, be made to the judge in Court by notice of motion, which shall specify the date and other particulars of the Order in respect of the non-obedience to which the application is made, and shall specify the amount due and be indorsed with the name and address of the solicitor or party suing out the notice of motion; and when the solicitor actually suing out such notice of motion sues out the same as agent for a solicitor in the country, the name and address of such solicitor in the country shall be indorsed on the notice of motion.

II. The service of the notice of motion shall, whenever it may be practicable, be personal on the debtor; but if it appears to the judge that reasonable efforts have been made to effect personal service, and either that the notice of motion has come to the knowledge of the debtor, or that he wilfully evades service, an order may be made as if personal service had been effected upon such terms as to the judge may seem fit.

III. Proof of the means of the debtor shall, whenever practicable, be given by affidavit; but if it appear to the judge, either before or at the hearing, that a *vivâ voce* examination either of the debtor or of any other person or the production of any document is expedient or necessary, an order may be made commanding the attendance of any such person before the judge, at a time and place to be therein mentioned, for the purpose of being examined on oath touching the matter in question, and an order may be made commanding the production of such documents. The disobedience to any such order shall be deemed a contempt of court, and be punishable accordingly.

IV. The order of committal may be in the form or to the effect stated in Schedule A. annexed to these rules, and shall, before delivery to the marshal, be endorsed with the particulars required by r. 1.

V. Upon payment of the sum or sums mentioned in the order (including the fees due to the marshal), the debtor shall be entitled to a certificate in the form of Schedule B. annexed to these rules, signed by the solicitor or party actually suing out the order, and attested before an attorney or justice of the peace.

VI. The marshal or his subordinate shall, within two days of the arrest, indorse on the order the true date of such arrest.

Form of Order of Committal.

Upon hearing, &c. [*name and surname of debtor and party claiming*],
I do order that the said A. B. be, for default of payment of the debt

hereinafter mentioned, committed to [*name of prison*] prison for the term of weeks from the date of his arrest, including the day of such date, or until he shall pay £ , being the amount of [*state particulars of debt or liability*], and which the said A. B. was, on the day of , ordered by the Admiralty Division of the High Court of Justice to pay to the said , together with £ for costs of and attending this order; and I do order that the marshal or his substitute do take the said A. B. for the purpose aforesaid.

Dated

(Signed)

Judge.

Form of Certificate of Payment.

I certify that A. B., now in the gaol of , upon an order of the Admiralty Division of the High Court of Justice, at the instance of C. D. for non-payment of a debt of £ , has satisfied the said debt, together with the costs mentioned in the said order.

Dated

(Signed)

Witness

ORDER XLIII.

WRITS OF FIERI FACIAS AND ELEGIT.

**Writs of
fi. fa.**

1. Writs of fieri facias and of elegit shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed.

2. Writs of venditioni exponas, distringas nuper vice comitem, fieri facias de bonis ecclesiasticis, sequestrari facias de bonis ecclesiasticis, and all other writs in aid of a writ of fieri facias or of elegit, may be issued and executed in the same cases and in the same manner as heretofore.

ORDER XLIV.

ATTACHMENT.

1. A writ of attachment shall have the same effect as a writ of Attachment issued out of the Court of Chancery has heretofore ^{ment} had.

2. No writ of attachment shall be issued without the leave of the Court or a judge, to be applied for on notice to the party against whom the attachment is to be issued.

Costs of moving for an attachment are in the discretion of the Court under O. lv. (*Abud v. Riches*, 2 L. R. Ch. D. 528; 45 L. J. Ch. 649).

ORDER XLV.

ATTACHMENT OF DEBTS.

1. Where a judgment is for the recovery by or payment to any ^{Attach-} person of money, the party entitled to enforce it may apply to the Court or a judge for an order that the judgment debtor be orally ^{ment of} examined as to whether any and what debts are owing to him, before an officer of the Court, or such other person as the Court or judge shall appoint; and the Court or judge may make an order for the examination of such judgment debtor, and for the production of any books or documents.

2. The Court or a judge may, upon the ex parte application of such judgment creditor, either before or after such oral examination and upon affidavit by himself or his solicitor stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a judge or an officer of the Court, as such Court or judge shall appoint, to show cause why he should not pay the judgment creditor the debt due from him to the judgment

debtor, or so much thereof as may be sufficient to satisfy the judgment debt.

This procedure has long been in use in the Common Law Divisions for decisions thereon, see Day's Common Law Procedure Acts, 4th ed., p. 314, *et seq.*

3. Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the Court or judge shall direct, shall bind such debts in his hands.

4. If the garnishee does not forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the Court or judge may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment debt.

5. If the garnishee disputes his liability, the Court or judge, instead of making an order that execution shall issue, may order that an issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined.

6. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or judge may order such third person to appear and state the nature and particulars of his claim upon such debt.

7. After hearing the allegations of such third person under such order, and of any person whom by the same or any subsequent order the Court or judge may order to appear, or in case of such third person not appearing when ordered, the Court or judge may order execution to issue to levy the amount due from such garnishee, or on any issue or question to be tried or determined according to the preceding rules of this order, and may bar the claim of such third person, or make such other order as such Court or judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Court or judge shall think just and reasonable.

See Day's Common Law Procedure Acts, 4th ed., p. 371 ; and see *ante*, p. 189 (note).

8. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid, shall be a valid discharge to him as against the judgment debtor, to the amount paid or levied, although such proceeding may be set aside, or the judgment reversed.

9. There shall be kept by the proper officer a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and copies of any entries made therein may be taken by any person upon application to the proper officer.

10. The costs of any application for an attachment of debts and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or a judge.

ORDER XLVI.

CHARGING OF STOCK OR SHARES AND DISTRINGAS.

1. An order charging stock or shares may be made by any Divisional Court or by any judge, and the proceedings for obtaining such order shall be such as are directed, and the effect shall be such as is provided by 1 & 2 Vict. c. 110, ss. 14 and 15, and 3 & 4 Vict. c. 82, s. 1.

See *In Re The Blakely Ordnance Co.*, 35 L. T. N. S. 617; 25 W. R. 111.

2. Any person claiming to be interested in any stock transferable at the Bank of England standing in the name of any other person may sue out a writ of distringas pursuant to the statute 5 Vict. c. 8, as heretofore. Such writ to be issued out of any office of the High Court in London where writs of summons are issued.

ORDER XLVII.

WRIT OF SEQUESTRATION.

Where any person is by any judgment directed to pay money into Court or to do any other act in a limited time, and after due service Writ of sequestration.

of such judgment refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment shall, at the expiration of the time limited for the performance thereof, be entitled, without obtaining any order for that purpose, to issue a writ of sequestration against the estate and effects of such disobedient person. Such writ of sequestration shall have the same effect as a writ of sequestration in Chancery has heretofore had, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration have heretofore been dealt with by the Court of Chancery.

See Daniel's Chancery Practice, p. 892; and *The Australia*, Swa. 480, as an example of the practice.

ORDER XLIX.

WRIT OF DELIVERY.

Writ of delivery. A writ for delivery of any property other than land or money may be issued and enforced in the manner heretofore in use in actions of detinue in the Superior Courts of Common Law.

Such a writ might be employed to enforce a judgment for a plaintiff in an action of possession.

ORDER L.

CHANGE OF PARTIES BY DEATH, &C.

Marriage, death, or bankruptcy of parties. 1. An action shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title pendente lite.

2. In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to an action, the Court or a judge may, if it be deemed necessary for the complete settlement of

all the questions involved in the action, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party to the action, or be served with notice thereof in such manner and form as hereinafter prescribed, and on such terms as the Court or judge shall think just, and shall make such order for the disposal of the action as may be just.

3. In case of an assignment, creation, or devolution of any estate or title pendente lite, the action may be continued by or against the person to or upon whom such estate or title has come or devolved. Assign-
ment of
estate.

4. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of an action, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action, it becomes necessary or desirable that any person not already a party to the action should be made a party thereto, or that any person already a party thereto should be made a party thereto in another capacity, an order that the proceedings in the action shall be carried on between the continuing parties to the action, and such new party or parties, may be obtained ex parte on application to the Court or a judge, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence. New
parties to,
marriage,
&c.

5. An order so obtained shall, unless the Court or judge shall otherwise direct, be served upon the continuing party or parties to the action, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the action shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons.

6. Where any person who is under no disability, or under no disability other than coverture, or being under any disability other than coverture, but having a guardian ad litem in the action, shall be served with such order, such person may apply to the Court or a judge to discharge or vary such order at any time within twelve days from the service thereof.

7. Where any person being under any disability other than coverture, and not having had a guardian ad litem appointed in the action, is served with any such order, such person may apply to the Court or a judge to discharge or vary such order at any time within twelve days from the appointment of a guardian or guardians ad

litem for such party, and until such period of twelve days shall have expired such order shall have no force or effect as against such last-mentioned person.

ORDER LI.

TRANSFERS AND CONSOLIDATION.

Transfer of actions. 1. Any action or actions may be transferred from one division to another of the High Court or from one judge to another of the Chancery Division by an order of the Lord Chancellor, provided that no transfer shall be made from or to any division without the consent of the president of the division.

2. Any action may, at any stage, be transferred from one division to another by an order made by the Court or any judge of the division to which the action is assigned: provided that no such transfer shall be made without the consent of the president of the division to which the action is proposed to be transferred.

See *Humphreys v. Edwards*, 45 L. J. Ch. 112.

2a. When an order has been made by any judge of the Chancery Division for the winding up of any company under the Companies Acts, 1862 and 1869, or for the administration of the assets of any testator or intestate, the judge in whose Court such winding up or administration shall be pending shall have power, without any further consent, to order the transfer to such judge of any action pending in any other division brought or continued by or against such company, or by or against the executors or administrators of the testator or intestate whose assets are being so administered, as the case may be.

3. Any action transferred to the Chancery Division or the Probate Division shall, by the order directing the transfer, be directed to be assigned to one of the judges of such division to be named in the order.

Consolidation. 4. Actions in any division or divisions may be consolidated by order of the Court or a judge in the manner heretofore in use in the Superior Courts of Common Law.

Rule 4 formulates what has long been the practice in Admiralty actions—to consolidate them for the purpose of

securing defendants from the payment of the larger costs which would ensue if the several actions were separately prosecuted. But, to afford ground for such consolidation, the actions must depend on precisely the same facts, though, as regards salvage actions, the Court has a somewhat wider power (*The William Hutt*, Lush. 25). The Court, after having consolidated, can sever the actions if necessary (*The William Hutt*, ante), and such consolidation may take place either on the application of the plaintiffs or defendants (*The Melpomene*, 4 L. R. Ad. 129; 29 L. T. N. S. 405). An order for consolidation will be made on summons by the registrar, but it seems to have been the practice to apply to the Court by motion to dis sever consolidated actions.

ORDER LII.

INTERLOCUTORY ORDERS AS TO MANDAMUS INJUNCTIONS OR INTERIM PRESERVATION OF PROPERTY, &c.

1. When by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured. Orders for preservation of property,

2. It shall be lawful for the Court or a judge, on the application by sale, of any party to any action, to make any order for the sale, by any person or persons named in such order, and in such manner, and on such terms as the Court or judge may seem desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once. &c.

3. It shall be lawful for the Court or a judge, upon the application of any party to an action, and upon such terms as may seem just, to make any order for the detention, preservation, or inspection of any property, being the subject of such action, and for all or any

of the purposes aforesaid, to authorize any person or persons to enter upon or into any land or building in the possession of any party to such action, and for all or any of the purposes aforesaid to authorize any samples to be taken or any observation to be made or experiment to be tried which may seem necessary or expedient for the purpose of obtaining full information or evidence.

4. An application for an order under section 25, sub-section 8, of the Act, or under Rules 2 or 3 of this Order, may be made to the Court or a judge by any party. If the application be by the plaintiff for an order under the said sub-section 8, it may be made either ex parte or with notice, and if for an order under the said Rules 2 or 3 of this Order, it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application.

5. An application for an order under Rule 1 may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court or a judge.

6. Where an action is brought to recover, or a defendant in his statement of defence seeks by way of counter-claim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or judge, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Court or judge may direct, and that upon such payment into Court being made, the property claimed be given up to the party claiming it.

Remarks
on this
order.

The procedure contained in this Order was, in fact, long employed in the Court of Admiralty, but the practice is more precisely formulated by it. R. 1 is of little importance as regards Admiralty matters, since it is really contained in r. 3. Section 25, sub-s. 8, of the J. A. 1875, should be read together with these rules.

For an example of a sale under r. 2, see *The Kathleen*,

(4 L. R. Ad. 269 ; 31 L. T. N. S. 204), of a cargo from derelict ship ; and for example of procedure under r. 4, see *The Horlock* (36 L. T. N. S. 622), where a defendant was restrained from dealing with the shares in a ship *pendente lite*.

R. 6 may be useful in some cases, as where a ship is claimed by a mortgagor, and a mortgagee asserts that he has a lien on it.

In some cases, where a ship or cargo is deteriorating in value, the Court, in analogy to these proceedings, has ordered it to be released on terms before it has been appraised (*The Glasgow Packet*, 8 Jur. 67).

ORDER LIII.

MOTIONS AND OTHER APPLICATIONS.

1. Where by these rules any application is authorized to be made Motions.
to the Court or a judge in an action, such application, if made to a judge in Court, shall be made by motion.¹

2. No rule or order to show cause shall be granted in any action, except in the cases in which an application for such rule or order is expressly authorized by these rules.

3. Except where by the practice existing at the time of the passing Notice of
of the said Act any order or rule has heretofore been made *ex parte* motion.
absolute in the first instance, and except where by these rules it is otherwise provided, and except where the motion is for a rule to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the Court or judge if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or judge may think just ; and any party affected by such order may move to set it aside.

It is impossible to state more definitely what is a matter which will entitle a party to move *ex parte*.

If a party gives notice of motion and does not appear, and the opposite party is in attendance to show cause, the

¹ By A. C. R., 1859, r. 141, "No motion shall be made to the judge in Court save by counsel, or by a party conducting his cause in person."

former will have to pay the costs of the appearance of the latter (*Berry v. Exchange Co.*, 1 L. R. Q. B. D. 77; 45 L. J. Q. B. 224).

Time. 4. Unless the Court or judge give special leave to the contrary, there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion.

They must be two clear days (*Daubney v. Shuttleworth*, 1 L. R. Ex. D. 53; 45 L. J. Ex. 177).

Notice to person to whom it has not been given. 5. If on the hearing of a motion or other application the Court or judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or Judge may think fit to impose.

Adjournment. 6. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or judge shall think fit.

Service. 7. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice, or any petition or summons upon any defendant, who, having been duly served with a writ of summons to appear in the action, has not appeared within the time limited for that purpose.

8. The plaintiff may, by leave of the Court or a judge to be obtained *ex parte*, serve any notice of motion upon any defendant along with the writ of summons or at any time after service of the writ of summons and before the time limited for the appearance of such defendant.

If a party appears to consent to a motion who would not have been prejudiced by it, he will not be allowed his costs (*The Achilles*, 25 L. T. N. S. 605).

Limitation of liability. It would appear to be proper under this order to state the practice, when in a damage suit the defendant claims to have his liability limited under the M. S. A., 1862, s. 54. It has already been mentioned, *ante*, O. xix., r. 3, that it may be claimed in a counterclaim, or a statement of defence. The most usual practice, at least where the defen-

dant admits that his ship is to blame, is to apply to the Court on motion, admitting liability, to limit such liability by the statutory sum, and to stay further proceedings, and the tonnage of the ship being proved by a copy of the vessel's certificate of registry, proceedings will then be stayed on the amount being paid into Court. The case will also be referred to the registrar to ascertain what sum should be awarded, and the defendants' solicitors will be required to give an undertaking for the payment of the costs of the action and reference (*The Expert*, 36 L. T. N. S. 258; *The Sisters*, 1 L. R. Ad. D. 281; 35 L. T. N. S. 36). The former practice, therefore, by which a limitation of liability was claimed by a separate petition in a new action by the defendant seems to be now quite unnecessary; for if the plaintiff contests the facts he can do so by means of affidavits at the hearing of the motion.

ORDER LIV.

APPLICATION AT CHAMBERS.

1. Every application at chambers authorized by these rules shall be made in a summary way by summons.

Summons
in cham-
bers.

This rule is absolute as to the procedure in chambers, and the practice of moving in chambers is now obsolete.

Every summons is prepared by the solicitor, and must be sealed in the registry.

The following rules, A. C. R. 1859, must be read in connection with this practice:—

R. 146. "If the solicitor summoned do not appear at the time named in the summons, the cause shall be called on and the judge (or registrar) thereupon shall make such order as to him shall seem fit."

R. 147. "If the solicitor by whom the summons has been taken out do not appear to support the same at the time named in the summons, the judge may, on the appli-

cation of the solicitor summoned dismiss the summons with costs."

R. 149. "Either solicitor may employ counsel at the hearing of any summons before the judge in chambers if notice thereof has been given to the adverse solicitor two days before the hearing of the summons."

No præcipe need be left at the registry when a summons is issued, but a duplicate summons is used in its place.

Matters not within the jurisdiction of the registrar.

2. In the Admiralty Division, a registrar may transact all such business and exercise all such authority and jurisdiction in respect of the same as under the Act, or the schedule thereto, or these rules, may be transacted or exercised by a judge at chambers, except in respect of the following proceeding and matters; that is to say—

All matters relating to criminal proceedings or to the liberty of the subject :

The removal of actions from one division or judge to another division or judge :

The settlement of issues, except by consent :

Discovery, whether of documents or otherwise, and inspection, except by consent :

Appeals from district registrars :

Interpleader other than such matters arising in interpleader as relate to practice only, except by consent :

Prohibitions :

Injunctions and other orders under sub-section 8 of section 25 of the Act, or under Order LII., Rules 1, 2, and 3 respectively :

Awarding of costs, other than the costs of any proceeding before such master :

Reviewing taxation of costs :

Charging orders on stock funds, annuities, or share of dividends or annual produce thereof :

It follows from this rule that any other matter than those enumerated above, may be brought before the registrar, for by J. A., 1873, section 39, the jurisdiction of the judge in chambers is almost unlimited.

2a. The authority and jurisdiction of the district registrar, or of a master of the Queen's Bench, Common Pleas, or Exchequer Divisions shall not extend to granting leave for service out of the jurisdiction of a writ of summons or notice of a writ of summons.

3. If any matter appears to the master proper for the decision of a judge, the master may refer the same to a judge, and the judge may either dispose of the matter or refer the same back to the master with such directions as he may think fit.

4. Any person affected by any order or decision of a master (registrar) may appeal therefrom to a judge at chambers. Such appeal shall be by summons, within four days after the decision complained of, or such further time as may be allowed by a judge or master. ^{Appeal from registrar.}

5. An appeal from a master's decision shall be no stay of proceeding unless so ordered by a judge or master.

At the hearing of a summons before the judge, he will, if it raises a difficult point, sometimes adjourn it for hearing into Court.

Rule 4 seems to make the appeal and the judgment necessarily in chambers. Rule 6, as to appeal to Court by motion, applies only to the Common Law Divisions, and is not printed here.

As to appeal from district registrar, see O. xxxv., r. 7.

As to costs on summons, see App. II., p. cxxi., Rules of Supreme Court (Costs), special allowances and general provisions.

A certificate for counsel should be asked for.

ORDER LV.

COSTS.

Subject to the provisions of the Act, the costs of and incident to all proceedings in the High Court shall be in the discretion of the Court. ^{Costs.}

2. In any cause or matter, in which security for costs is required, the security shall be of such amount, and be given at such time or times, and in such manner or form, as the Court or a judge shall direct.

Although by the above rule costs are in the discretion of the Court, there are certain rules defined with more or less

preciseness by which the Court is ordinarily governed in the exercise of its discretion.

Salvage.

In salvage actions costs usually follow the event (*The Lady Egidia*, Lush. 513; *The Edward Hawkins*, *ib.* 515; 15 Moo. P. C. 586); but (1) under special circumstances unsuccessful plaintiffs have been allowed all or some part of their costs, as for the purpose of encouraging mariners to rescue property (*The India*, 1 W. Rob. 406; *The Princess Alice*, 3 W. Rob. 143) in consequence of being summoned by an ambiguous signal (*The Little Joe*, Lush. 88; *The Martha*, Swa. 489). In such case a definite sum *nomine expensarum* is frequently given in place of costs. (2) At times when a plaintiff is unsuccessful no order is made as to costs, as when a suit is dismissed for want of jurisdiction (*The Willem III.*, 3 L. R. Ad. 487; 25 L. T. N. S. 386), when an agreement for salvage is set aside, but some reward is given (*The Medina*, 2 L. R. Ad. D. 272), where the contract of service is held to prevent a salvage reward (*The Ganges*, 2 L. R. Ad. 370; 38 L. J. Ad. 61). (3) Salvors who have substantiated their claim are sometimes deprived of all or a part of their costs in consequence of improper conduct, such as denying the services of co-salvors (*The Bartley*, Swa. 198; *The Glasgow Packet*, 2 W. Rob. 306)—not doing all they might have done. (*The Scout*, 3 L. R. Ad. 512; 41 L. J. Ad. 42). To avoid difficulties as to apportionment where there are several sets of salvors one sum *nomine expensarum* is given to them in place of costs (*The Enterprise*, 2 Hagg. 178 n.; *The Kathleen*, 31 L. T. N. S. 204 (210)). Out-port charges are to be made up in one bill with the general costs of the action (*The City of Brussels*, 4 L. R. Ad. 194; 42 L. J. Ad. 72).

When an action is successfully brought against ship, freight, and cargo, the costs must be equally divided (*The Marquis of Huntley*, 3 Hagg. 246; *The Peace*, Swa. 115).

Under 23 & 24 Vict. c. 127, and by general principles

of Equity, a solicitor has a charge upon the property recovered or preserved through his instrumentality in priority to claims which accrue after the institution of the suit (*The Philippine*, 1 L. R. Ad. 309; *The Heinrich*, 3 L. R. Ad. 505; 41 L. J. Ad. 68).

Costs in towage actions usually follow the event (*The Towage. Robert Pow*, Br. & L. 99; 32 L. J. Ad. 64); but circumstances may arise, as carelessness on the part of the towed and towing vessel, when each party will have to bear their own costs (*The Energy*, 3 L. R. Ad. 48; 39 L. J. Ad. 25).

Costs in actions of damage, as a rule, follow the event; **Damage.** thus if damage is occasioned by the wrongful act of the ship complained of, the plaintiff will be entitled to costs, and so if damage is entirely the result of negligence on the part of the complaining ship, that vessel will be condemned in costs (*The Albert Edward*, 44 L. J. Ad.; 24 W. R. 179). If the damage is caused by inevitable accident each side must pay its own costs, unless the action was unreasonably brought (*The Marpesia*, 4 L. R. P. C. 212; 26 L. T. N. S. 333). Again, if both parties are to blame, they must each pay their own costs (*The Washington*, 5 Jur. 1067; *The Telegraph*, 1 Spk. 427; *The Lake St. Clair*, 36 L. T. N. S. 155 (160)). But exceptional circumstances will produce exceptions to the above rules, such as misconduct on the part of those who are successful or not to blame (*The Celt*, 3 Hagg. 328), or the novelty of the point decided by the decision of the Court (*The Diana*, Lush. 539; 32 L. J. Ad. 57). The rule as to costs when the defence of compulsory pilotage is set up seems to be that where this is the sole ground of defence, and the defendants succeed upon it, they are entitled to their costs (*The Juno*, 1 L. R. Ad. Div. 135; 34 L. T. N. S. 741); but that where other grounds are also relied on in addition to that of compulsory pilotage, but the defence is successful on this point alone, then each party bears his own costs (*The Daoiz*, 37 L. T. N. S. 137; *The Schwan*, 4 L. R. Ad. 187;

30 L. T. N. S. 537); and this rule is followed in the Court of Appeal (*The Daoiz, ante*). This rule has been held not to apply to the other Divisions of the High Court (*General Steam Navigation Co. v. London and Edinburgh Co.*, 2 L. R. Ex. D. 467.)

No order can be made against the representatives of the Crown for the payment of costs, but as a matter of grace the Crown in practice abides by the usual rules (*The Leda*, 32 L. T. N. S. 58; Br. & L. 19).

Damage to cargo. In actions for damage to cargo, the costs, as a rule, follow the event (*e.g.*, *The Heinrich*, 3 L. R. Ad. 424); but if less than 20*l.* is recovered a certificate is necessary.

Wages. When the claim is pronounced for, costs usually follow the event (*The Minstrel*, 2 Hagg. 40; *The Limerick*, 1 L. R. Ad. D. 292; 45 L. J. Ad. 97); but circumstances may arise, such as exorbitant claims, which will cause the plaintiff to be condemned in costs (*The William*, Lush. 199), or owners may be equally to blame, as in striking an unreasonable amount off a claim when each party must pay their own costs (*The Lemuella*, Lush. 147; 30 L. J. Ad. 1). Again, a master may be entitled to payment, yet his conduct may have fully justified a defence to the action, when each party will be ordered to pay their own costs (*The Roebuck*, 31 L. T. N. S. 274). If a master does not furnish accounts before bringing an action, he will be condemned in costs (*The Fleur de Lis*, 1 L. R. Ad. 49; 12 Jur. N. S. 379); and if a claimant has the means of living at a cheaper rate than would ordinarily be the case, the costs in the nature of detention and living-money must be less (*The Royal Family*, 31 L. T. N. S. 704).

Necessaries. Costs, as a rule, follow the event in actions for necessaries (*The Aaltjee Willemina*, 1 L. R. Ad. 107).

Possession. Costs also generally follow the event in actions of possession (*e.g.*, *The Eastern Belle*, 33 L. T. N. S. 314), as they do in actions for mortgage (*e.g.*, *The Western Ocean*, 3 L. R. Ad. 38), and in these they will be taxed as between party and party, according to the practice of the Chancery

Division (*The Kestrel*, 1 L. R. Ad. 78; 12 Jur. N. S. 713).

And the same rule seems to prevail in actions on bottomry Bottomry. bonds (*The Onward*, 4 L. R. Ad. 38 (58); 42 L. R. Ad. 61). But all these rules must be read, subject to the provisions of the County Court Acts as to costs.

When a tender is pronounced for, the Court will generally Tender. compel the plaintiff to pay the costs of the action (*The Cargo ex Honor*, 1 L. R. Ad. 57; 35 L. J. Ad. 115; *The Vrow Margaretha*, 4 C. Rob. 103; *The Waverley*, 3 L. R. Ad. 369; 40 L. J. Ad. 42). It has the same effect on the costs of a reference as of the main action, but it will not, where insufficient, and the plaintiff has put forward exorbitant claims, prevent him from paying his own costs on account of such improper claim (*The William*, Lush. 200); but if the tender is made in an irregular manner, without costs, the defendants will not obtain their costs if pronounced for (*The Hickman*, 3 L. R. Ad. 15; 39 L. J. Ad. 7). The acceptance of a tender is a recovery within the meaning of the M. S. A., 1854, so as to entitle a plaintiff to his costs in an action in the High Court (*The John*, Lush. 13; *The Hickman*, *supra*).

As a general rule, if the defendant in a reference takes Reference. off one third of the plaintiff's claim, the latter must pay costs; if one fourth, each party must then bear his own costs. But this rule does not apply to masters' wages, in which cases costs must depend on the circumstances of each particular case (*The Empress Eugenie*, Lush. 140; *The Lemuella*, Lush. 147; 30 L. J. Ad. 1), and in some instances the above rules have been reluctantly departed from (*The Amelia*, 23 L. T. N. S. 544). As to tender, see *ante*, p. 159.

With regard to the costs of an appeal against the registrar's report, they usually follow the event (*The Black Prince*, Lush. 568; 5 L. T. N. S. 39; *The Parana*, 1 L. R. Ad. D. 452; 45 L. J. Ad. 108; but see *The Limerick*, 1 L. R. Ad. D. 292 (300)).

In the
Court of
Appeal.

The costs in the Court of Appeal—that is to say, both those in the Appeal Court and in the Court below—follow the event, unless there are very strong reasons to the contrary (*Olivant v. Wright*, 1 L. R. Ch. D. 41; 45 L. J. Ch. 1 (4); *The City of Berlin*, 2 L. R. Ad. D. 186; 37 L. T. N. S. 307; *The Glannibanta*, 1 L. R. Ad. D. 283; 34 L. T. N. S. 934).

As to the second rule of this order—

Security
for costs.

Where the plaintiff resides out of the jurisdiction of the High Court, he may be required to give security for costs, although at the time of application he is within the jurisdiction (*The Franz et Elise*, Lush. 377; 5 L. T. N. S. 290; *The Zufall*, 44 L. J. Ad. 16; 32 L. T. N. S. 571). And where the defendant brings a counterclaim, he may be compelled, unless the ship is under arrest and is of sufficient value to cover the claim and costs, or sufficient bail has been given, to give security for the costs of the whole action, not only for the costs caused by such counterclaim (*The Julia Fisher*, 2 L. R. Ad. D. 115; 36 L. T. N. S. 259). The procedure by counterclaim having taken the place of cross actions in causes of damage, the practice as to security for costs, formulated by A. C. Act, 1861, s. 34, in cases when the ship of the plaintiff had not been arrested, whereby the plaintiff was obliged to give security, is applicable to cases of counterclaim (*The Charkieh*, 4 L. R. Ad. 120; 29 L. T. N. S. 404). And a defendant who claims a limitation of his liability by petition is, as regards security for costs, in the same position as an ordinary plaintiff (*The Wild Ranger*, Lush. 553; 5 L. T. N. S. 164).

An order for security for costs will also be made in cases where the plaintiff may be within the jurisdiction, when there are some exceptional circumstances to justify such an order, as the recent insolvency of the claimant (*The Lake Megantic*, 36 L. T. N. S. 183), for in this matter the Admiralty Division acts upon principles long established in the Common Law Courts, moreover the rule as to

foreigners has been applied to foreign Governments (*The Beatrice*, 36 L. J. Ad. 10).

The amount of the security depends on the circumstances of each particular case, as the importance of the action, the character of the parties, and so forth.

Thus, in an action for wages, when the plaintiffs are foreigners in England, it will be a moderate sum (*The Zufall, ante*). The application should be made as early as possible in an action (*The Volant*, 1 W. Rob. 384), and proceedings will be stayed until such security as is ordered is given. If the order is not complied with within a reasonable time, the claim will be dismissed (*The Julia Fisher, ante*). The money must be paid into the Bank of England, to the account of the registrar, upon a receivable order, which can be obtained at the registry, or, if bail is given, the practice as set out at p. 112 is applicable. But the rule as to security for costs is not applicable to damages for which security is not required (*The Mary or Alexandra*, 1 L. R. Ad. 335; 16 L. T. N. S. 98).

It may be convenient to notice here the practice as to security for costs in the Court of Appeal. By O. lviii, r. 15, security may be required under "special circumstances." The Court of Appeal has decided that there must be really unusual circumstances to induce them to grant the application, and that they will, as far as possible, follow the practice of the Privy Council (*The Victoria*, 1 L. R. Ad. D. 281; 34 L. T. N. S. 391). Security was required by the Privy Council when the appellant resided out of the jurisdiction of the Court (Privy Council Rules, No. 15; Macpherson, P. C. Prac., 2nd ed.; App., p. 121); but the practice as to amount and time under this rule would not now be in force, since, by O. lviii, r. 15, these are in the discretion of the Court. The time in which security must be given would seem to be a reasonable one, otherwise the appeal will be dismissed on motion by the respondent (*Judd v. Green*, 4 L. R. Ch. D. 784; 46 L. J. Ch. 257).

In an appeal from a division other than Admiralty, poverty and voluminous evidence have been considered special circumstances (*Wilson v. Smith*, 2 L. R. Ch. D. 67; 45 L. J. Ch. 692). Moreover security must be only for future costs certain to be incurred, not for those which already exist or may possibly arise (*Grant v. The Banque Franco-Egyptienne*, 1 L. R. C. P. D. 143; 34 L. T. N. S. 470; 2 L. R. C. P. D. 430). As to time and mode of application, see O. lviii., r. 15.

Taxation
of costs.

As regards the taxation of costs, the following rules from A. C. R., 1859, describe the initial proceedings, after which they continue in the manner described in the Rules of the Supreme Court (Costs); see App. II., p. cxxiii.

119. A solicitor, entitled to have his bill of costs taxed by the registrar, shall file the same in the registry, a copy thereof having been previously served upon the adverse solicitor (if any); and a notice shall be sent from the registry of the time appointed for the taxation.

120. At the time appointed for the taxation the registrar may proceed to tax the bill, if only one of the solicitors in the cause be present.

121. The practice in regard to porrecting bills of costs is hereby abolished, and in lieu thereof the registrar shall certify at the foot of the bill the amount at which he has taxed it, and the solicitor may then apply to the judge for an order for the payment thereof.

When costs have been taxed, an application for the usual order for payment may be made to the judge, and it, as part of the judgment, may be enforced in the same way (see O. xlii., *et seq.*).

Costs bear interest from the signing of the allocatur, since 1 & 2 Vict. c. 110, s. 17, is, by J. A., 1876, s. 76, applicable to the Admiralty Division (*The Jones Brothers*, 37 L. T. N. S. 164; see also *Schroder v. Clough*, 46 L. J. C. P. 365).

With regard to appeals against the taxation of bills of costs, see Rules of Supreme Court (Costs), rules 30-33, App. II.

The judge is very reluctant to interfere with the discretion of the registrar in the matter of taxation, the guiding principle in which is, that the party who has been successful in the action shall be indemnified for all losses and expenses to which he has *necessarily* been put by the legal proceedings (*The Karla*, Br. & L. 367).

ORDER LVI.

NOTICES AND PAPER, ETC.

1. All notices required by these rules shall be in writing, unless Notices expressly authorized by a Court or judge to be given orally.

The next three rules from A. C. R., 1859, should be read with the above :—

151. "The service of a notice by a solicitor may be effected by his clerk or agent, and if required to be verified shall be verified by affidavit."

152. "Notices required to be left in the registry shall be signed by the solicitor, or his clerk for him."

153. "Notices sent from the registry may be sent by post, and the day on which the notice is posted shall be considered as the day of the service thereof, and the posting thereof shall be a sufficient service."

156. No document shall be filed, unless properly indorsed and stamped. Filing documents.

157. No document, of which a copy is required to be served on the adverse solicitor, shall be filed in the registry without a certificate indorsed thereon, signed by the solicitor or by his clerk for him, to the effect that the document has been duly served.

159. If a solicitor, save by permission of the judge or registrar, do not file or serve on the adverse solicitor, as may be required of him, any document within the time allowed by any of these rules, the adverse solicitor shall not be compelled to receive the same, save by order of the judge.

160. On filing any instrument or document, the solicitor shall Minutes state, in writing, on a printed form to be obtained in the registry, called a minute, the nature of the instrument or document filed, and the date of the filing thereof.

161. A record of all minutes, and of all causes instituted and appearances entered, and of all decrees and orders of the Court, shall be entered in a book to be kept in the registry, called the "Minute Book."

The cause book, Order V. R. 8, p. 109, has, for public purposes superseded the minute book, which is now only used for the convenience of the officials of the registry.

Searches. 180. Other persons may inspect the Court books on payment of the proper fee.

181. No person, except a party or solicitor in the cause or a clerk of the latter, shall be allowed, save by permission of the judge, to inspect any of the documents in a pending cause.

"Other," that is, than the parties and solicitors in a cause who are charged the fees for searches set out in the list of fees, see App. II., p. cxxix.

Paper. 3. Proceedings required to be printed shall be printed on cream wove machine drawing foolscap folio paper, 19 lbs. per mill ream, or thereabouts, in pica type leaded, with an inner margin about three quarters of an inch wide, and an outer margin about two inches and a half wide.

Affidavits. 4. Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript.

See Rules of Supreme Court (Costs), Orders i., iii., v., App. II.

ORDER LVII.

TIME.

1. Where by these rules, or by any judgment or order given or Months. made after the commencement of the Act, time for doing any act or taking any proceeding is limited by months, not expressed to be lunar months, such time shall be computed by calendar months.

2. Where any limited time less than six days from or after any Days not date or event is appointed or allowed for doing any act or taking any reckoned. proceeding, Sunday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time.

3. Where the time for doing any act or taking any proceeding Sundays. expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

4. No pleadings shall be amended or delivered in the long vacation, Long unless directed by a Court or a judge. vacation.

5. The time of the long vacation shall not be reckoned in the computation of the times appointed or allowed by these rules for filing, amending, or delivering any pleading, unless otherwise directed by a Court or a judge.

6. A Court or a judge shall have power to enlarge or abridge the Enlarging time appointed by these rules, or fixed by any order enlarging time, and for doing any act or taking any proceeding, upon such terms (if any) abridging times. as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

7. In Admiralty actions the Court or a judge shall have power at any stage of the proceedings in such action, upon a motion or summons by either party, calling upon the other party to show cause why the trial of such action should not take place on an early day to be appointed by the Court or a judge, to appoint that such trial shall take place on any day or within any time which to the Court or judge shall seem fit; and for such purpose the Court or judge shall have power, upon such motion or summons, to dispense with the giving of notice of trial, or to abridge the time or times appointed by these rules for giving such notice, for the delivery of pleadings, or for doing any other act or taking any other proceeding in the action, upon such terms (if any) as the nature of the case may require.

ORDER LVIII.

APPEALS.

Appeals.

2. All appeals to the Court of Appeal shall be by way of re-hearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part.

Notice of appeal.

3. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may seem just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as to the Court of Appeal may seem fit.

4. Notice of appeal from any judgment, whether final or interlocutory, shall be a fourteen days' notice, and notice of appeal from any interlocutory order shall be a four days' notice.

Amendment and further evidence.

5. The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of First Instance, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court. The Court of Appeal shall have power to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court, notwithstanding that the notice of appeal

may be that part only of the decision reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may seem just.

The Court of Appeal will very rarely allow the admission of further evidence unless very strong reasons can be shown in favour of the application. Where no application for an adjournment of the hearing below was made for the purpose of obtaining the new evidence if procurable, or if the Court below in effect had the facts to be proved by the new evidence before it, then the further evidence will not be admitted (*The Scindia*, 1 L. R. P. C. 241 ; 4 Moo. P. C. N. S. 84. Compare with this case *Bigby v. Dickinson*, 4 L. R. Ch. D. 24 ; 46 L. J. Ch. 280, where the Court acted upon this principle). As to costs, *see ante*, O. lv., r. 1.

Admission
of further
evidence.

6. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied, he shall, within the time specified in the next rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers conferred by the Act upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.

Motion by
way of
cross
appeal.

This applies to an application to vary the order of the Court below as to costs when the respondent is otherwise satisfied with the decree (*Harris v. Aaron*, 4 L. R. Ch. D. 749 ; 25 W. R. 353).

As to costs
below.

7. Subject to any special order which may be made, notice by a respondent under the last preceding rule shall in the case of any appeal from a final judgment be an eight days' notice, and in the case of an appeal from an interlocutory order a two days' notice.

Time of
notice.

8. The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or

Entry of
appeal.

an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.

The proper officer in this case is the registrar of the Admiralty Division, who is the registrar in Admiralty appeals of the Appeal Court (J. A., 1875, s. 8, and O. lx.).

Ex parte
applica-
tion.

10. Where an ex parte application has been refused by the Court below, an application for a similar purpose may be made to the Court of Appeal ex parte within four days from the date of such refusal, or within such enlarged time as a judge of the Court below or of the Appeal Court may allow.

Evidence
from Court
below.

11. When any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such question shall, subject to any special order, be brought before the Court of Appeal as follows :

- (a). As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed.
- (b). As to any evidence given orally, by the production of a copy of the judge's notes, or such other materials as the Court may deem expedient.

The rule as to office copies has been relaxed, when the affidavits were very voluminous, to save expense (*Sickles v. Morris*, 45 L. J. C. P. 148; 24 W. R. 102; and see *Crawford v. Hornsey Steam Company*, 34 L. T. N. S. 923; 24 W. R. 422). The official shorthand writer's notes are usually directed to be printed for the use of the Court of Appeal without an order from a judge.

Printing
evidence.

12. Where evidence has not been printed in the Court below, the Court below or a judge thereof, or the Court of Appeal or a judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Court of Appeal or a judge thereof shall otherwise order.

Where a party has had notes taken of the evidence, and both parties used them on appeal without leave, since they

were absolutely necessary, the costs of the printing were allowed (*Bigsby v. Dickinson*, 4 L. R. Ch. D. 24; 46 L. J. Ch. 280).

13. If, upon the hearing of an appeal, a question arises as to the ruling or direction of the judge to a jury or assessors, the Court shall have regard to verified notes or other evidence, and to such other materials as the Court may deem expedient.

14. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving decision upon the appeal as may seem just. ^{Interlocutory orders.}

15. No appeal from any interlocutory order shall, except by special leave of the Court of Appeal, be brought after the expiration of twenty-one days, and no other appeal shall, except by such leave, be brought after the expiration of one year. The said respective periods shall be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Court of Appeal. ^{Time for appealing.}

The notice of appeal must be served within twenty-one days, whether the offices be open or shut (*ex parte Saffery*, 5 L. R. Ch. D. 365; 36 L. T. N. S. 532).

As to circumstances under which security for costs will be allowed, see *ante*, O. lv. The motion on which the application is made should be set down on a day fixed for interlocutory motions (*Grills v. Dillon*, 2 L. R. Ch. D. 325; 24 W. R. 431).

In one case execution was stayed and the money ordered to be paid into Court and invested in Exchequer Bonds (*The Cybele*, 37 L. T. N. S. 165).

16. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court appealed from, or any judge thereof, or the Court of Appeal may so order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct. ^{Stay of proceedings.}

17. Wherever under these rules an application may be made either ^{Applications.}

to the Court below or to the Court of Appeal, or to a judge of the Court below or of the Court of Appeal, it shall be made in the first instance to the Court or judge below.

Motions. 18. Every application to a judge of the Court of Appeal shall be by motion, and the provisions of O. liii. shall apply thereto.

19a. Admiralty appeals from Inferior Courts until further order shall be assigned as heretofore to the present judge of the Admiralty Court. See *ante*, p. 94.

**Principles
by which
the Court
of Appeal
is guided.**

Appeals from the Admiralty Division are sometimes on questions of law, more frequently on questions of fact. When the former come before the Court of Appeal they are heard and decided as if they were argued for the first time. But as regards the latter, certain well considered principles have been laid down. When the judge below must necessarily have been influenced in his decision by the demeanour and conduct of the witnesses, the Court of Appeal will rarely disturb his judgment, but when he has decided on inferences from certain facts they will not hesitate to overrule his decision (*The Glannibanta*, 1 L. R. Ad. D. 283 ; 34 L. T. N. S. 934).

When the question to be decided relates to the amount awarded by the Court below it will not be altered unless the difference between the sum allowed and that which in the opinion of the Court of Appeal should have been allotted is very considerable, or in other words, so exorbitant, so manifestly excessive (or the reverse), that it would be unjust to confirm it. These have also been laid down as grounds for varying the amount, that the judgment of the judge below has been influenced by something by which it should not have been so influenced, that he has failed to consider some fact which should have been duly weighed, or that he has laid undue weight on a fact otherwise worthy of fair consideration (see *The Cuba*, Lush. 14, 6 Jur. N. S. 152 ; *The Amerique*, 6 L. R. P. C. 468 ; 31 L. T. N. S. 854).

**Appeal to
House of
Lords.**

By the Appellate Jurisdiction Act, 1875, a further appeal lies to the House of Lords, but it is understood that this tribunal will entertain an appeal on a question of law but not of fact.

ORDER LIX.

EFFECT OF NON-COMPLIANCE.

Non-compliance with any of these rules shall not render the proceedings in any action void unless the Court or a judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or judge may think fit.

ORDER LX.

OFFICERS.

1. All officers who at the time of the commencement of the said Act shall be attached to the Court of Admiralty shall be attached to the Probate, Divorce, and Admiralty Division of the said High Court.

2. Officers attached to any division shall follow the appeals from the same division, and shall perform in the Court of Appeal analogous duties in reference to such appeals as the registrars and officers of the Court of Chancery usually performed as to re-hearings in the Court of Appeal in Chancery, and as the masters and officers of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively performed as to appeals heard by the Court of Exchequer Chamber.

See J. A., 1875, s. 8.

ORDER LXI.

SITTINGS AND VACATIONS.

1. The sittings of the Court of Appeal and the sittings in London and Middlesex of the High Court of Justice shall be four in every year, viz., the Michaelmas sittings, the Hilary sittings, the Easter sittings, and the Trinity sittings.

The Michaelmas sittings shall commence on the 2nd of November and terminate on the 21st of December; the Hilary sittings shall commence on the 11th of January and terminate on the Wednesday

before Easter; the Easter sittings shall commence on the Tuesday after Easter week and terminate on the Friday before Whitsunday.

The Trinity sittings shall commence on the Tuesday after Whitsun week and terminate on the 8th of August.

Vacations. 2. The vacations to be observed in the several courts and offices of the Supreme Court shall be four in every year, viz., the Long vacation, the Christmas vacation, the Easter vacation, and the Whitsun vacation.

The Long vacation shall commence on the 10th of August and terminate on the 24th of October. The Christmas vacation shall commence on the 24th of December and terminate on the 6th of January.

The Easter vacation shall commence on Good Friday and terminate on Easter Tuesday, and the Whitsun vacation shall commence on the Saturday before Whitsunday and shall terminate on the Tuesday after Whitsunday.

3. The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively.

4. The several offices of the Supreme Court shall be open on every day of the year, except Sundays, Good Friday, Monday and Tuesday in Easter week, Whit Monday, Christmas Day, and the next following working days, and all days appointed by proclamation to be observe as days of general fast, humiliation, or thanksgiving.

4a. The offices of each district registrar of the High Court of Justice shall be open on every day and hour in the year on which the offices of the registrar of the County Court of the place in which the district registry is situate are required to be kept open.

The hours in the day during which the registry in London is open are from 10 a.m. to 4 p.m., and the marshal's office also from 10 a.m. to 4 p.m., and on Saturdays the hours are 10 a.m. to 2 p.m.

4b. The offices of the Supreme Court (including the judges' chambers) shall close on Saturdays at 2 o'clock.

**Vacation
business.**

5. Two of the judges of the High Court shall be selected at the commencement of each Long vacation for the hearing in London and Middlesex during vacation of all such applications as may require to be immediately or promptly heard. Such two judges shall act as vacation judges for one year from their appointment. In the absence of arrangement between the judges, the two vacation judges shall be the two judges last appointed (whether as judges of the said High Court or of any Court whose jurisdiction is by the said Act trans-

ferred to the said High Court) who have not already served as vacation judges of any such Court, and if there shall not be two judges for the time being of the said High Court who shall not have so served, then the two vacation judges shall be the judge (if any) who has not so served and the senior judge or judges who has or have so served once only according to seniority of appointment, whether in the said High Court or such other Court as aforesaid. The Lord Chancellor shall not be liable to serve as a vacation judge.

6. The vacation judges may sit either separately or together as a divisional Court as occasion shall require, and may hear and dispose of all actions, matters, and other business to whichever division the same may be assigned. No order made by a vacation judge shall be reversed or varied except by a divisional Court or the Court of Appeal, or a judge thereof, or the judge who made the order. Any other judge of the High Court may sit in vacation for any vacation judge.

7. The vacation judges of the High Court may dispose of all actions, matters, and other business of an urgent nature during any interval between the sittings of any division of the High Court to which such business may be assigned, although such interval may not be called or known as a vacation.

These last three rules enable Admiralty business of a pressing nature to be heard during the vacations, but the matters must be of a really urgent nature to be heard by a vacation judge, if they are of such a character it is now the practice to apply to him.

As to non-delivery of pleadings, see O. lvii, r. 4.

ORDER LXIII.

INTERPRETATION OF TERMS.

The provisions of the 100th section of the Act shall apply to these rules. Interpretation of terms.

In the construction of these rules, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the meanings following:—

“Person” shall include a body corporate or politic:

“Probate actions” shall include actions and other matters

relating to the grant or recall of probate or of letters of administration other than common form business :

“ Proper officer ” shall, unless and until any rule to the contrary is made, mean an officer to be ascertained as follows :—

(a). Where any duty to be discharged under the Act or these rules is a duty which has heretofore been discharged by any officer, such officer shall continue to be the proper officer to discharge the same :

(b). Where any new duty is under the Act or these rules to be discharged, the proper officer to discharge the same shall be such officer, having previously discharged analogous duties, as may from time to time be directed to discharge the same, in the case of an officer of the Supreme Court, or the High Court of Justice, or the Court of Appeal, not attached to any division, by the Lord Chancellor, and in the case of an officer attached to any division, by the president of the division, and in the case of an officer attached to any judge, by such judge.

“ The Act ” and “ the said Act ” shall respectively mean the Supreme Court of Judicature Act, 1873, as amended by this Act.

APPENDIX I.

STATUTES.

36 & 37 VICT. CAP. 66.

SUPREME COURT OF JUDICATURE.*

An Act for the Constitution of a Supreme Court, and for other purposes relating to the better Administration of Justice in England; and to authorize the transfer to the Appellate Division of such Supreme Court of the Jurisdiction of the Judicial Committee of her Majesty's Privy Council. A.D. 1873

[5th August, 1873.]

Preliminary.

1. This Act may be cited for all purposes as "The Supreme Court Short title. of Judicature Act, 1873."

PART I.

Constitution and Judges of Supreme Court.

3. From and after the time appointed for the commencement of this Act, the several Courts hereinafter mentioned (that is to say), the High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes, shall be united and consolidated together, and shall constitute, under and subject to the provisions of this Act, one Supreme Court of Judicature in England. Union of existing Courts into one Supreme Court.

4. The said Supreme Court shall consist of two permanent divisions, one of which, under the name of "Her Majesty's High Court of Justice," shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is hereinafter mentioned, and the other of which, under the name of "Her Majesty's Court of Appeal," shall have and exercise appellate jurisdiction, with such original jurisdiction as hereinafter mentioned as may be incident to the determination of any appeal. Division of Supreme Court into a Court of original and a Court of appellate jurisdiction.

5. Her Majesty's High Court of Justice shall be constituted as follows: the judges thereof shall be (*inter alios*) the Judge of the High Court of Admiralty. Constitution of High Court of Justice.

Every Judge who shall be appointed to fill the place of any other Judge of the said High Court of Justice shall be styled in his appointment "Judge of her Majesty's High Court of Justice," and shall be

* So much only of this Act is inserted as touches directly the jurisdiction and composition of the Admiralty Division.

A.D. 1873. appointed in the same manner in which the Puisne Justices and Junior Barons of the Superior Courts of Common Law have been heretofore appointed.

All the Judges of the said Court shall have in all respects, save as in this Act is otherwise expressly provided, equal power, authority, and jurisdiction; and shall be addressed in the manner which is now customary in addressing the Judges of the Superior Courts of Common Law.

PART II.

Jurisdiction and Law.

Jurisdiction
of High
Court of
Justice.

16. The High Court of Justice shall be a Superior Court of Record, and, subject as in this Act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by (*among others*).

(5.) The High Court of Admiralty.

The jurisdiction by this Act transferred to the High Court of Justice shall include (subject to the exceptions hereinafter contained) the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any one or more of the Judges of the said Courts respectively, sitting in Court or Chambers, or elsewhere, when acting as Judges or a Judge, in pursuance of any statute, law, or custom, and all powers given to any such Court, or to any such Judges or Judge, by any statute; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdictions so transferred.

Jurisdiction
transferred
to Court of
Appeal.

18. The Court of Appeal established by this Act shall be a Superior Court of Record, and there shall be transferred to and vested in such Court all jurisdiction and powers of the Courts following (that is to say): (*inter alia*)—

(5.) All jurisdiction vested in or capable of being exercised by her Majesty in Council, or the Judicial Committee of her Majesty's Privy Council, upon appeal from any judgment or order of the High Court of Admiralty.

Appeals
from High
Court

19. The said Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as hereinafter mentioned, of her Majesty's High Court of Justice, or of any Judges or Judge thereof, subject to the provisions of this Act, and to such rules and orders of Court for regulating the terms and conditions on which such appeals shall be allowed, as may be made pursuant to this Act.

For all the purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order made on any such appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority, and jurisdiction by this Act vested in the High Court of Justice.

Power to
transfer
jurisdiction
of Judicial
Committee
by Order in
Council.

21. It shall be lawful for her Majesty, if she shall think fit, at any time hereafter by Order in Council to direct that all appeals and petitions whatsoever to her Majesty in Council, which according to the laws now in force ought to be heard by or before the Judicial Committee of her Majesty's Privy Council, shall from and after a

time to be fixed by such order, be referred for hearing to and be heard by her Majesty's Court of Appeal; and from and after the time fixed by such order, all such appeals and petitions shall be referred for hearing to and be heard by the said Court of Appeal accordingly, and shall not be heard by the said Judicial Committee; and for all the purposes of and incidental to the hearing of such appeals or petitions, and the reports to be made to her Majesty thereon, and all orders thereon to be afterwards made by her Majesty in Council, and also for all purposes of and incidental to the enforcement of any such orders as may be made by the said Court of Appeal or by her Majesty, pursuant to this section (but not for any other purpose), all the power, authority, and jurisdiction now by law vested in the said Judicial Committee shall be transferred to and vested in the said Court of Appeal.

22. From and after the commencement of this Act the several jurisdictions which by this Act are transferred to and vested in the said High Court of Justice and the said Court of Appeal respectively, shall cease to be exercised, except by the said High Court of Justice and the said Court of Appeal respectively, as provided by this Act; and no further or other appointment of any Judge to any Court whose jurisdiction is so transferred shall be made except as provided by this Act.

Transfer of
pending
business

23. The jurisdiction by this Act transferred to the said High Court of Justice and the said Court of Appeal respectively shall be exercised (so far as regards procedure and practice) in the manner provided by this Act, or by such rules and orders of Court as may be made pursuant to this Act: and where no special provision is contained in this Act, or in any such rules or orders of Court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective Courts from which such jurisdiction shall have been transferred, or by any of such Courts.

Rules as to
exercise of
jurisdiction.

24. In every civil cause or matter commenced in the High Court of Justice law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the rules following:

Law and
equity to be
concur-
rently ad-
ministered.

- (1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a Court of Equity, the said Courts respectively, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose properly instituted before the passing of this Act.
- (2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every Judge thereof, shall

A.D. 1873.

give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purpose before the passing of this Act.

- (3.) The said Courts respectively, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively, or any Judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any rule of Court or any order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same right in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant.
- (4.) The said Courts respectively, and every Judge thereof, shall recognize and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act.
- (5.) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not been passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not been passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings

in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such order as shall be just. A.D. 1873.

- (6.) Subject to the aforesaid provisions forgiving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every Judge thereof, shall recognize and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the common law or by any custom, or created by any statute, in the same manner as the same would have been recognized and given effect to if this Act had not passed by any of the Courts whose jurisdiction is hereby transferred to the said High Court of Justice.

- (7.) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

25. And whereas it is expedient to take occasion of the union of the several Courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the law to be hereafter administered in England as to the matters next hereinafter mentioned: Be it enacted as follows:

- (6.) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this act had not passed), to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor, or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or

Rules of law upon certain points.

Assignment of debts and choses in action.

A.D. 1873.

Stipulations
not of the
essence of
contracts.

he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the acts for the relief of trustees.

(7.) Stipulations in contracts, as to time or otherwise, which would not before the passing of this Act have been deemed to be or to have become of the essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have heretofore received in equity.

Injunction
and re-
ceivers.

(8.) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.

Damages by
collisions at
sea.

(9.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail.

Cases of
conflict not
enumerated.

(11.) Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

PART III.*Sittings and Distribution of Business.*

Abolition of
terms.

26. The division of the legal year into terms shall be abolished so far as relates to the administration of justice; and there shall no longer be terms applicable to any sitting or business of the High Court of Justice, or of the Court of Appeal, or of any commissioners to whom any jurisdiction may be assigned under this Act; but in all other cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. Subject to rules of Court, the High Court of Justice and the Court of Appeal, and the Judges thereof respectively, shall have power to sit and act, at any time, and at any place, for the transaction of any part of the business of such Courts respectively, or of such Judges or Commissioners, or for the discharge of any duty which by any Act of Parliament, or otherwise, is required to be discharged during or after term.

28. Provision shall be made by rules of Court for the hearing, in London or Middlesex, during vacation by Judges of the High Court of Justice and the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.

A.D. 1873.
Sittings in vacation.

31. For the more convenient despatch of business in the said High Court of Justice (but not so as to prevent any Judge from sitting whenever required in any Divisional Court, or for any Judge of a different division from his own), there shall be in the said High Court five divisions, consisting of such number of Judges respectively as hereinafter mentioned. Such five divisions shall respectively include, immediately on the commencement of this Act, the several Judges following; (that is to say,)

Divisions of the High Court of Justice.

- (5.) One other division shall consist of two Judges who, immediately on the commencement of this Act, shall be the existing Judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes, and the existing Judge of the High Court of Admiralty, unless either of them is appointed an ordinary Judge to the Court of Appeal. The existing Judge of the Court of Probate shall (unless so appointed) be the president of the said division, and subject thereto the senior Judge of the said division, according to the order of precedence under this Act, shall be president.

The said five divisions shall be called respectively the Chancery Division, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate, Divorce, and Admiralty Division.

Any Judge of any of the said divisions may be transferred by her Majesty, under her royal sign manual, from one to another of the said divisions.

Upon any vacancy happening among the Judges of the said High Court, the Judge appointed to fill such vacancy shall, subject to the provisions of this Act, and to any rules of Court which may be made pursuant thereto, become a member of the same division to which the Judge whose place has become vacant belonged.

33. All causes and matters which may be commenced in, or which shall be transferred by this Act to, the High Court of Justice, shall be distributed among the several divisions and Judges of the said High Court, in such manner as may from time to time be determined by any rules of Court, or orders of transfer, to be made under the authority of this Act; and in the meantime, and subject thereto, all such causes and matters shall be assigned to the said divisions respectively, in the manner hereinafter provided. Every document by which any cause or matter may be commenced in the said High Court shall be marked with the name of the division, or with the name of the Judge, to which or to whom the same is assigned.

Rules of Court to provide for distribution of business.

There shall be assigned (subject as aforesaid) to the Probate, Divorce, and Admiralty Division of the said High Court :

- (1.) All causes and matters pending in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, at the commencement of this Act :
- (2.) All causes and matters which would have been within the exclusive cognizance of the Court of Probate, or the Court for Divorce and Matrimonial Causes, or of the High Court of Admiralty, if this Act had not passed.

A.D. 1873. 36. Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by such authority and in such manner as rules of Court may direct from one division or Judge of the High Court of Justice to any other division or Judge thereof, or may by the like authority be retained in the division in which the same was commenced, although such may not be the proper division to which the same cause or matter ought, in the first instance, to have been assigned.

39. Any Judge of the said High Court of Justice may, subject to any rules of Court, exercise in Court or in Chambers all or any part of the jurisdiction by this Act vested in the said High Court, in all such causes and matters, and in all such proceedings in any causes or matters, as before the passing of this Act might have been heard in Court or in Chambers respectively, by a single Judge of any of the Courts whose jurisdiction is hereby transferred to the said High Court, or as may be directed or authorized to be so heard by any rules of court to be hereafter made. In all such cases, any Judge sitting in Court shall be deemed to constitute a Court.

42. Subject to any rules of Court, and in the meantime until such rules shall be made, all business arising out of any cause or matter assigned to the Chancery or Probate, Divorce, and Admiralty Division of the said High Court shall be transacted and disposed of in the first instance by one Judge only, as has been heretofore accustomed in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively; and every cause or matter which, at the commencement of this Act, may be depending in the Court of Chancery, the Court of Probate, and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively, shall (subject to the power of transfer) be assigned to the same Judge in or to whose Court the same may have been depending or attached at the commencement of this Act; and every cause or matter which after the commencement of this Act may be commenced in the Chancery Division of the said High Court shall be assigned to one of the Judges thereof, by marking the same with the name of such of the said Judges as the plaintiff or petitioner (subject to the power of transfer) may in his option think fit: Provided that, (subject to any rules of Court, and to the power of transfer, and to the provisions of this Act as to trial of questions or issues by commissioners, or in Middlesex or London) all causes and matters which, if this Act had not passed, would have been within the exclusive cognizance of the High Court of Admiralty, shall be assigned to the present Judge of the said Admiralty Court during his continuance in office as a Judge of the High Court.

44. Divisional Courts may be held for the transaction of any part of the business assigned to the Probate, Divorce and Admiralty Division of the said High Court, which the Judges of such division, with the concurrence of the President of the said High Court, deem proper to be heard by a Divisional Court. Any cause or matter assigned to the said Probate, Divorce, and Admiralty Division may be heard at the request of the President of such division, with the concurrence of the President of the said High Court, by any other Judge of the said High Court.

46. Subject to any rules of Court, any Judge of the said High Court, sitting in the exercise of its jurisdiction elsewhere than in a

Power of transfer.

Powers of one or more Judges not constituting Court.

Distribution of business among the Judges of Probate, Divorce, and Admiralty Divisions of the High Court.

Divisional Courts for business belonging to the division.

Cases and points may be reserved

Divisional Court, may reserve any case, or any point in a case, for the consideration of a Divisional Court, or may direct any case, or point in a case, to be argued before a Divisional Court; and any Divisional Court of the said High Court shall have power to hear and determine any such case or point so reserved or so directed to be argued. **A.D. 1873.**

49. No order made by the High Court of Justice or any Judge thereof, by the consent of parties, or as to costs only, which by law are left to the discretion of the Court, shall be subject to any appeal, except by leave of the Court or Judge making such order. for or directed to be argued before Divisional Courts. What orders shall not be subject to appeal.

50. Every order made by a Judge of the said High Court in Chambers, except orders made in the exercise of such discretion as aforesaid, may be set aside or discharged upon notice by any Divisional Court, or by the Judge sitting in Court, according to the course and practice of the division of the High Court to which the particular cause or matter in which such order is made may be assigned; and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the Judge by whom such order was made, or of the Court of Appeal. As to discharging orders made in Chambers.

52. In any cause or matter pending before the Court of Appeal, any direction incidental thereto, not involving the decision of the appeal, may be given by a single Judge of the Court of Appeal; and a single Judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single Judge may be discharged or varied by the Court of Appeal or a Divisional Court thereof. Power of a single Judge in Court of Appeal.

60. And whereas it is expedient to facilitate the prosecution in country districts of such proceedings as may be more speedily, cheaply, and conveniently carried on therein, it shall be lawful for her Majesty, by Order in Council, from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings may be taken and recorded as are hereinafter mentioned; and her Majesty may thereby appoint that any registrar of any county court, or any registrar or prothonotary or district prothonotary of any local Court whose jurisdiction is hereby transferred to the said High Court of Justice, or from which an appeal is hereby given to the said Court of Appeal, or any person who having been a district registrar of the Court of Probate, or of the Admiralty Court, shall under this Act become and be a district registrar of the said High Court of Justice, or who shall hereafter be appointed such district registrar, shall and may be a district registrar of the said High Court for the purpose of issuing such writs as aforesaid, and having such proceedings taken before him as are hereinafter mentioned. This section shall come into operation immediately upon the passing of this Act. Her Majesty may establish district registries in the country for the Supreme Court.

61. In every such district registry such seal shall be used as the Lord Chancellor shall from time to time, either before or after the time fixed for the commencement of this Act, direct, which seal shall be impressed on every writ and other document issued out of or filed in such district registry, and all such writs and documents, and all exemplifications and copies thereof, purporting to be sealed with the seal of any such district registry, shall in all parts of the United Kingdom be received in evidence without further proof thereof. Seals of district registries.

A.D. 1873. 62. All such district registrars shall have power to administer oaths and perform such other duties in respect of any proceedings pending in the said High Court of Justice or in the said Court of Appeal as may be assigned to them from time to time by rules of Court, or by any special order of the Court.

Power of district registrars.

Proceedings to be taken in district registries.

Including arrest of ship, etc.

64. Subject to the rules of Court in force for the time being, writs of summons for the commencement of actions in the High Court of Justice shall be issued by the district registrars when thereunto required; and unless any order to the contrary shall be made by the High Court of Justice or by any Judge thereof, all such further proceedings, including proceedings for the arrest or detention of a ship, her tackle, apparel, furniture, cargo, or freight, as may and ought to be taken by the respective parties to such action in the said High Court, down to and including entry for trial, or (if the plaintiff is entitled to sign final judgment or to obtain an order for an account by reason of the non-appearance of the defendant) down to and including final judgment, or an order for an account, may be taken before the district registrar, and recorded in the district registry, in such manner as may be prescribed by rules of Court; and all such other proceedings in any such action as may be prescribed by rules of Court shall be taken and if necessary may be recorded in the same district registry.

Power for Court to remove proceedings from district registries.

65. Any party to an action in which a writ of summons shall have been issued from any such district registry shall be at liberty at any time to apply, in such manner as shall be prescribed by rules of Court, to the said High Court, or to a Judge at Chambers of the division of the said High Court to which the action may be assigned to remove the proceedings from such district registry into the proper office of the said High Court; and the Court or Judge may, if it be thought fit, grant such application, and in such case the proceedings and such original documents, if any, as may be filed therein shall upon receipt of such order be transmitted by the district registrar to the proper office of the said High Court, and the said action shall thenceforth proceed in the said High Court in the same manner as if it had been originally commenced by a writ of summons issued out of the proper office in London; or the Court or Judge, if it be thought right, may thereupon direct that the proceedings may continue to be taken in such district registry.

Accounts and inquiries may be referred to district registrars.

66. It shall be lawful for the Court, or any Judge of the division to which any cause or matter pending in the said High Court is assigned, if it shall be thought fit, to order that any books or documents may be produced, or any accounts taken or inquiries made, in the office of or by any such district registrar as aforesaid; and in any such case the district registrar shall proceed to carry all such directions into effect in the manner prescribed; and in any case in which any such accounts or inquiries shall have been directed to be taken or made by any district registrar, the report in writing of such district registrar as to the result of such accounts or inquiries may be acted upon by the Court, as to the Court shall seem fit.

Acts of Parliament relating to former Courts to be read as applying to Courts

76. All Acts of Parliament relating to the several Courts and Judges, whose jurisdiction is hereby transferred to the said High Court of Justice and the said Court of Appeal respectively, or wherein any of such Courts or Judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done after the commencement of this Act, as if the said

High Court of Justice or the said Court of Appeal, and the Judges thereof, respectively, as the case may be, had been named therein instead of such Courts or Judges whose jurisdiction is so transferred respectively. A.D. 1873.
under this Act.

PART VI.

Jurisdiction of Inferior Courts.

88. It shall be lawful for her Majesty from time to time by Order in Council to confer on any inferior Court of civil jurisdiction, the same jurisdiction in Admiralty, as any County Court now has, or may hereafter have, and such jurisdiction, if and when conferred, shall be exercised in the manner by this Act directed. Power by Order in Council to confer jurisdiction on inferior Courts.

89. Every inferior Court which now has or which may after the passing of this Act have jurisdiction in equity, or at law and in equity, and in Admiralty respectively, shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and shall grant in any proceeding before such Court, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal (subject to the provision next hereinafter contained), in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice. Powers of inferior Courts having Equity and Admiralty jurisdiction.

90. Where in any proceeding before any such inferior Court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counter-claim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such counter-claim: Provided always, that in such case it shall be lawful for the High Court, or any division or Judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such inferior Court to the High Court, or to any division thereof; and in such case the record in such proceeding shall be transmitted by the registrar, or other proper officer of the inferior Court to the said High Court; and the same shall thenceforth be continued and prosecuted in the said High Court as if it had been originally commenced therein. Counter-claims in inferior Courts, and transfers therefrom.

91. The several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in England, so far as the matters to which such rules relate shall be respectively cognizable by such Courts. Rules of law to apply to inferior Courts.

PART VII.

Miscellaneous Provisions.

92. All books, documents, papers, and chattels in the possession of any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or to the Court of Appeal, or of any officer or person attached to any such Court, as such officer, or by reason of his being so attached, shall be transferred to the Supreme Court, and shall Transfer of books and papers to Supreme Court.

A.D. 1873. be dealt with by such officer or person in such manner as the High Court of Justice or the Court of Appeal may by order direct ; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Supreme Court.

Interpreta-
tion of
terms.

100. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have, or include, the meanings following ; (that is to say,)

“ Rules of Court ” shall include forms.

“ Cause ” shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown.

“ Suit ” shall include action.

“ Action ” shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by rules of Court : and shall not include a criminal proceeding by the Crown.

“ Plaintiff ” shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.

“ Petitioner ” shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.

“ Defendant ” shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.

“ Party ” shall include every person served with notice of, or attending any proceeding, although not named on the record.

“ Matter ” shall include every proceeding in the Court not in a cause.

“ Pleading ” shall include any petition or summons, and also shall include the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant.

“ Judgment ” shall include decree.

“ Order ” shall include rule.

“ Oath ” shall include solemn affirmation and statutory declaration.

“ Pension ” shall include retirement and superannuation allowance.

“ Existing ” shall mean existing at the time appointed for the commencement of this Act.

38 & 39 VICT. CAP. 77.

THE SUPREME COURT OF JUDICATURE ACT, 1875.

An Act to amend and extend the Supreme Court of Judicature A.D. 1875.
Act, 1873. [11th August, 1875.]

1. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Supreme Court of Judicature Act, 1873 (in this Act referred to as the principal Act), and, together with the principal Act, may be cited as the Supreme Court of Judicature Acts, 1873 and 1875, and this Act may be cited separately as the Supreme Court of Judicature Act, 1875.

Short title
and con-
struction
with 36 & 37
Vict. c. 66.

4. Her Majesty's Court of Appeal, in this Act and in the principal Act referred to as the Court of Appeal, shall be constituted as follows: There shall be five ex-officio Judges thereof, and also so many ordinary Judges, not exceeding three at any one time, as her Majesty shall from time to time appoint.

Constitu-
tion of Court
of Appeal.

The ex-officio Judges shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer.

The first ordinary Judges of the said Court shall be the present Lords Justices of Appeal in Chancery, and such one other person as her Majesty may be pleased to appoint by letters patent. Such appointment may be made either before or after the commencement of this Act, but if made before shall take effect at the commencement of the Act.

The ordinary Judges of the Court of Appeal shall be styled Justices of Appeal.

The Lord Chancellor may, by writing addressed to the president of any one or more of the following divisions of the High Court of Justice, that is to say, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate, Divorce, and Admiralty Division, request the attendance at any time, except during the times of the spring or summer circuits, of an additional Judge from such division or divisions (not being ex-officio Judge or Judges of the Court of Appeal) at the sittings of the Court of Appeal, and a Judge, to be selected by the division from which his attendance is requested, shall attend accordingly.

Every additional Judge, during the time that he attends the sittings of her Majesty's Court of Appeal, shall have all the jurisdiction and powers of a Judge of the said Court of Appeal, but he shall not otherwise be deemed to be a Judge of the said Court, or to have ceased to be a Judge of the division of the High Court of Justice to which he belongs.

Section fifty-four of the principal Act is hereby repealed, and instead thereof the following enactment shall take effect: No Judge of the said Court of Appeal shall sit as a Judge on the hearing of an appeal from any judgment or order made by himself, or made by any Divisional Court of the High Court of which he was and is a member.

6. The Lord Chancellor shall be president of the Court of Appeal; the other ex-officio Judges of the Court of Appeal shall rank in the order of their present respective official precedence. The ordinary Judges of the Court of Appeal, if not entitled to precedence as Peers

Precedence
of Judges.

A. D. 1875. or Privy Councillors, shall rank according to the priority of their respective appointments as such Judges.

The Judges of the High Court of Justice who are not also Judges of the Court of Appeal shall rank next after the Judges of the Court of Appeal, and, among themselves (subject to the provisions in the principal Act contained as to existing Judges), according to the priority of their respective appointments.

Admiralty
Judges and
registrars.

8. Whereas by section eleven of the principal Act it is provided as follows: "Every existing Judge who is by this Act made a Judge of the High Court of Justice or an ordinary Judge of the Court of Appeal shall, as to tenure of office, rank, title, salary, pension, patronage, and powers of appointment or dismissal, and all other privileges and disqualifications, remain in the same condition as if this Act had not passed; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this Act, each of the said existing Judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any Act of Parliament, law, or custom if this Act had not passed. No Judge appointed before the passing of this Act shall be required to act under any commission of assize, nisi prius, oyer and terminer, or gaol delivery, unless he was so liable by usage or custom at the commencement of this Act:"

And whereas the Judge of the High Court of Admiralty is by the principal Act appointed a Judge of the High Court of Justice:

And whereas such Judge is, as to salary and pension, inferior in position to the other Puisne Judges of the superior courts of common law, but holds certain ecclesiastical and other offices in addition to the office of Judge of the High Court of Admiralty:

And whereas it is expedient that such Judge, if he be willing to relinquish such other offices, should be placed in the same position as to rank, salary, and pension as the other Puisne Judges of the superior courts of common law:

Be it enacted that—

If the existing Judge of the High Court of Admiralty under his hand signifies to the Lord Chancellor in writing, before the commencement of the principal Act, that he is willing to relinquish such other offices as aforesaid, and does before the commencement of the principal Act resign all other offices of emolument held by him except the office of Judge of the High Court of Admiralty, he shall, from and after the commencement of the principal Act, be entitled to the same rank, salary, and pension as if he had been appointed a Judge of the High Court of Justice immediately on the commencement of the principal Act, with this addition, that, in reckoning service for the purposes of his pension, his service as a Judge of the High Court of Admiralty shall be reckoned in the same manner as if the High Court of Justice had been established at the time of his accepting the office of Judge of the High Court of Admiralty, and he had continued from such time to be a Judge of the said High Court of Justice.

The present holder of the office of registrar of her Majesty in Ecclesiastical and Admiralty causes shall, as respects any appeals in which he would otherwise be concerned coming within the cognizance of the Court of Appeal, be deemed to be an officer attached to the Supreme Court; and the office, so far as respects the duties in relation to such appeals as aforesaid, shall be deemed to be a separate office

within the meaning of section seventy-seven of the principal Act, and **A. D. 1875.** may be dealt with accordingly. He shall be entitled, in so far as he sustains any loss of emoluments by or in consequence of the principal Act or this Act, to prefer a claim to the Treasury in the same manner as an officer paid out of fees whose emoluments are affected by the passing of the principal Act is entitled to do under section eighty of the principal Act.

Subject as aforesaid, the person who is at the time of the passing of this Act registrar of her Majesty in Ecclesiastical and Admiralty causes shall, notwithstanding anything in the principal Act or this Act, have the same rank and hold his office upon the same tenure and upon the same terms and conditions as heretofore; but it shall be lawful for her Majesty by Order in Council made upon the recommendation of the Lord Chancellor, with the concurrence of the treasury, to make, notwithstanding anything contained in any Act of Parliament, such arrangements with respect to the duties of the said last-mentioned office, either by abolition thereof or otherwise, as to her Majesty may seem expedient: Provided that such order shall not take effect during the continuance in such office of the said person so being registrar at the time of the passing of this Act, without his assent.

Every Judge of the Probate, Divorce, and Admiralty Division of the said High Court of Justice appointed after the passing of this Act shall, so far as the state of business in the said division will admit, share with the Judges mentioned in section thirty-seven of the principal Act the duty of holding sittings for trials by jury in London and Middlesex, and sittings under commissions of assize, oyer and terminer, and gaol delivery.

11. Subject to any rules of Court, and to the provisions of the principal Act and this Act, and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign such cause or matter to one of the divisions of the said High Court as he may think fit, by marking the document by which the same is commenced with the name of such division, and giving notice thereof to the proper officer of the Court: Provided that—

Provision as to option for any plaintiff (subject to rules) to choose in what division he will sue,—in substitution for 36 & 37 Vict. c. 66, s. 35.

- (1.) All interlocutory and other steps and proceedings in or before the said High Court in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any rules of Court and to the power of transfer) in the division of the said High Court to which such cause or matter is for the time being attached; and,
- (2.) If any plaintiff or petitioner shall at any time assign his cause or matter to any division of the said High Court to which, according to the rules of Court or the provisions of the principal Act or this Act, the same ought not to be assigned, the Court, or any Judge of such division, upon being informed thereof, may, on a summary application at any stage of the cause or matter, direct the same to be transferred to the division of the said Court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner or by any other party in any such cause or

A.D. 1875.

matter, and all orders made therein by the Court or any Judge thereof before any such transfer, shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper division of the said Court to which such cause or matter ought to have been assigned ; and,

- (3.) Subject to rules of Court, a person commencing any cause or matter shall not assign the same to the Probate, Divorce, and Admiralty Division unless he would have been entitled to commence the same in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, if this Act had not passed.

Sittings of
Court of
Appeal.

12. Every appeal to the Court of Appeal shall, where the subject-matter of the appeal is a final order, decree, or judgment, be heard before not less than three Judges of the said Court sitting together, and shall, when the subject-matter of the appeal is an interlocutory order, decree, or judgment, be heard before not less than two Judges of the said Court sitting together.

Any doubt which may arise as to what decrees, orders, or judgments are final, and what are interlocutory, shall be determined by the Court of Appeal.

Subject to the provisions contained in this section the Court of Appeal may sit in two divisions at the same time.

Amendment
of s. 60 of
36 & 37 Vict.
c. 60, as to
district
registrars.

13. Whereas by section sixty of the principal Act it is provided that for the purpose of facilitating the prosecution in country districts of legal proceedings, it shall be lawful for her Majesty by Order in Council from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined ; and whereas it is expedient to amend the said section ; be it therefore enacted that—

Where any such order has been made, two persons may, if required, be appointed to perform the duties of district registrar in any district named in the order, and such persons shall be deemed to be joint district registrars, and shall perform the said duties in such manner as may from time to time be directed by the said order, or any Order in Council amending the same.

Moreover, the registrar of any inferior Court of Record having jurisdiction in any part of any district defined by such order (other than a county court) shall, if appointed by her Majesty, be qualified to be a district registrar for the said district, or for any and such part thereof as may be directed by such order or any order amending the same.

Every district registrar shall be deemed to be an officer of the Supreme Court, and be subject accordingly to the jurisdiction of such Court, and of the divisions thereof.

Rules in
first sche-
dule, in
substitution
for 36 & 37
Vict. c. 60,
s. 69, and
schedule.

16. The rules of Court in the first schedule to this Act shall come into operation at the commencement of this Act, and as to all matters to which they extend shall thenceforth regulate the proceedings in the High Court of Justice and Court of Appeal. But such rules of Court, and also all such other rules of Court (if any) as may be made after the passing and before the commencement of this Act under the authority of the next section, may be annulled or altered by the authority by which new rules of Court may be made after the commencement of this Act.

Provision as
to rules of

18. All rules and orders of Court in force at the time of the com-

commencement of this Act in the Admiralty Court, except so far as they are expressly varied by the first schedule hereto, or by rules of Court made by Order in Council before the commencement of this Act, shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively until they shall respectively be altered or annulled by any rules of Court made after the commencement of this Act.

21. Save as by the principal Act or this Act, or by any rules of Court, may be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in any of the Courts whose jurisdiction is by the principal Act or this Act transferred to the said High Court and to the said Court of Appeal respectively, under or by virtue of any law, custom, general order, or rules whatsoever, and which are not inconsistent with the principal Act or this Act or with any rules of Court, may continue to be used and practised, in the said High Court of Justice and the said Court of Appeal respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective Courts of which the jurisdiction is so transferred, if the principal Act and this Act had not passed.

24. Where any provisions in respect of the practice or procedure of any Courts the jurisdiction of which is transferred by the principal Act or this Act to the High Court of Justice or the Court of Appeal, are contained in any Act of Parliament, rules of Court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the High Court of Justice and the Court of Appeal, without prejudice nevertheless to any power of the Lord Chancellor, with the concurrence of the Treasury, to make any rules with respect to the Paymaster-General, or otherwise.

Any provisions relating to the payment, transfer, or deposit into, or in, or out of any Court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure.

The Lord Chancellor, with the concurrence of the Treasury, may from time to time, by order, determine to what accounts and how intitled any such money or property as last aforesaid, whether paid, transferred, or deposited before or after the commencement of this Act, is to be carried, and modify all or any forms relating to such accounts; and the Governor and Company of the Bank of England, and all other companies, bodies corporate, and persons shall make such entries and alterations in their books as may be directed by the Lord Chancellor, with the concurrence of the Treasury, for the purpose of carrying into effect any such order.

26. The Lord Chancellor, with the advice and consent of the Judges of the Supreme Court or any three of them, and with the concurrence of the Treasury, may, either before or after the commencement of this Act, by order, fix the fees and per-centages (including the per-centage on estates of lunatics) to be taken in the High Court of Justice or in the Court of Appeal, or in any Court created by any commission or in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any of those Courts or the Supreme Court, or any Judge of those Courts, including the masters and other officers in lunacy, and may from time to time by order increase, reduce, or

A.D. 1875.

Probate, Divorce, and Admiralty Courts, being rules of the High Court,—in substitution for 36 & 37 Vict. c. 66, s. 70.

Provision for saving of existing of Courts when not inconsistent with this Act, or rules of Court,—in substitution for 36 & 37 Vict. c. 66, s. 73.

Additional power as to regulation of practice and procedure by rules of Court.

Fixing and collection of fees in High Court and Court of Appeal.

A.D. 1875. abolish all or any of such fees and per-centages, and appoint new fees and per-centages to be taken in the said Courts or offices or any of them, or by any such officer as aforesaid.

Any order made in pursuance of this section shall, be binding on all the courts, offices, and officers to which it refers, in the same manner as if it had been enacted by Parliament.

All such fees and per-centages shall (save as otherwise directed by the order) be paid into the receipt of her Majesty's Exchequer and be carried to the Consolidated Fund, and with respect thereto the following rules shall be observed :

- (1.) The fees and per-centages shall, except so far as the order may otherwise direct, be taken by stamps, and if not taken by stamps shall be taken, applied, accounted for, and paid over in such manner as may be directed by the order.
- (2.) Such stamps shall be impressed or adhesive, as the Treasury from time to time direct.
- (3.) The Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for insuring the proper cancellation of stamps and for keeping accounts of such stamps.
- (4.) Any document which ought to bear a stamp in pursuance of this Act, or any rule or order made thereunder, shall not be received, filed, used, or admitted in evidence unless and until it is properly stamped, within the time prescribed by the rules under this section regulating the use of stamps, but if any such document is through mistake or inadvertence received, filed, or used without being properly stamped, the Lord Chancellor or the Court may, if he or it shall think fit, order that the same be stamped as in such order may be directed.

An order under this section may abolish any existing fees and per-centages which may be taken in the said Courts or offices, or any of them, or by the said officers or any of them, but, subject to the provisions of any order made in pursuance of this section, the existing fees and per-centages shall continue to be taken, applied, and accounted for in the existing manner.

Repeal

33. From and after the commencement of this Act there shall be repealed—

- (1.) The Acts specified in the second schedule to this Act, to the extent in the third column in that schedule mentioned, without prejudice, to anything done or suffered before the said commencement under the enactments hereby repealed ; also,
- (2.) Any other enactment inconsistent with this Act or the principal Act.

39 & 40 VICT. CAP. 59.

APPELLATE JURISDICTION ACT, 1876:

An Act for amending the Law in respect of the Appellate Jurisdiction of the House of Lords ; and for other purposes. **A.D. 1876**

[11th August, 1876.]

Preliminary.

1. This Act may be cited for all purposes as "The Appellate Jurisdiction Act, 1876." Short title.

Appeal.

3. Subject as in this Act mentioned an appeal shall lie to the House of Lords from any order or judgment of any of the Courts following ; that is to say, Cases in which appeal lies to House of Lords.

(1.) Of her Majesty's Court of Appeal in England ; and

(3.) Of any Court in Ireland from which error or an appeal at or immediately before the commencement of this Act lay to the House of Lords by common law or by statute.

4. Every appeal shall be brought by way of petition to the House of Lords, praying that the matter of the order or judgment appealed against may be reviewed before her Majesty the Queen in her Court of Parliament, in order that the said Court may determine what of right, and according to the law and custom of this realm, ought to be done in the subject-matter of such appeal. Form of appeal to House of Lords.

5. An appeal shall not be heard and determined by the House of Lords unless there are present at such hearing and determination not less than three of the following persons, in this Act designated Lords of Appeal ; that is to say, Attendance of certain number of Lords of Appeal required at hearing and determination of appeals.

(1.) The Lord Chancellor of Great Britain for the time being ; and

(2.) The Lords of Appeal in Ordinary to be appointed as in this Act mentioned ; and

(3.) Such Peers of Parliament as are for the time being holding or have held any of the offices in this Act described as high judicial offices.

8. For preventing delay in the administration of justice, the House of Lords may sit and act for the purpose of hearing and determining appeals, and also for the purpose of Lords of Appeal in Ordinary taking their seats and the oaths, during any prorogation of Parliament, at such time and in such manner as may be appointed by order of the House of Lords made during the preceding season of Parliament ; and all orders and proceedings of the said House in relation to appeals and the matters connected therewith during such prorogation, shall be as valid as if Parliament had been then sitting, but no business other than the hearing and determination of appeals and the matters connected therewith, and Lords of Appeal in Ordinary taking their seats and the oaths as aforesaid, shall be transacted by such House during such prorogation. Hearing and determination of appeals during prorogation of Parliament.

Any order of the House of Lords may for the purposes of this Act be made at any time after the passing of this Act.

29. A district registrar of the Supreme Court of Judicature may

Appoint-
ment of

A.D. 1876. from time to time, but in each case with the approval of the Lord Chancellor and subject to such regulations as the Lord Chancellor may from time to time make, appoint a deputy, and all acts authorized or required to be done by, to, or before a district registrar may be done by, to, or before any deputy so appointed: provided always, that in no case such appointment shall be made for a period exceeding three months. This section shall come into force at the time of the passing of this Act.

deputy by
district
registrars.

Appoint-
ment of
vice-admiral,
judge,
and officers
of Vice-
Admiralty
Court.

23. Whereas by "The Vice-Admiralty Courts Act, 1863," it is enacted that "nothing in this Act contained shall be taken to affect the power of the Admiralty to appoint any vice-admiral, or any Judge, registrar, marshal, or other officer of any Vice-Admiralty Court, as heretofore, by warrant from the Admiralty, and by letters patent issued under the seal of the High Court of Admiralty of England:"

And whereas since the commencement of the Supreme Court of Judicature Acts, 1873 and 1875, doubts have arisen with respect to the exercise of the said power of the Admiralty, it is expedient to remove such doubts: be it therefore enacted as follows:—

Any power of the Admiralty to appoint or cancel the appointment of a vice-admiral, or a Judge, registrar, marshal, or other officer of a Vice-Admiralty Court, may, after the passing of this Act be exercised by some writing under the hands of the Admiralty, and the seal of the office of Admiralty, and in such form as the Admiralty from time to time direct.

Every appointment so made shall have the same effect, and every vice-admiral, Judge, registrar, marshal, and other officer so appointed shall have the same jurisdiction, power, and authority, and be subject to the same obligation, as if he had been appointed before the commencement of the Supreme Court of Judicature Acts, 1873, and 1875, under the seal of the High Court of Admiralty of England.

"Admiralty" in this section means the Lord High Admiral, or the Commissioners for executing his office, or any two of such Commissioners.

3 & 4 VICT. CAP. 65.

A.D. 1840. *An Act to improve the Practice and extend the Jurisdiction of the High Court of Admiralty of England.* [7th August, 1840.]

WHEREAS the jurisdiction of the High Court of Admiralty of England may be in certain respects advantageously extended, and the practice thereof improved: be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, that it shall be lawful for the dean of the Arches for the time being to be assistant to and to exercise all the power, authority and jurisdiction, and to have all the privileges and protections of the Judge of the said High Court of Admiralty, with respect to all suits and proceedings in the said Court, and that all such suits and proceedings, and all things relating thereto, brought or taking place before the dean of the Arches, whether the Judge of the said High Court of Admiralty be or be not at the same time sitting or transacting the business of the

Dean of
Arches to
sit for Judge
of Court of
Admiralty
in certain
cases.

same Court, and also during any vacancy of the office of Judge of the said Court, shall be of the same force and effect in all respects as if the same had been brought or had taken place before the Judge himself, and all such suits and proceedings shall be entered and registered as having been brought and as having taken place before the dean of the Arches sitting for the Judge of the High Court of Admiralty. A.D. 1840.

2. And be it declared and enacted, that all persons who now are or at any time hereafter may be entitled to practise as advocates in the Court of Arches are and shall be entitled to practise as advocates in the said High Court of Admiralty; and that all persons who now are or hereafter may be entitled to act as surrogates or proctors in the Court of Arches shall be entitled respectively to practise and act, or to be admitted to practise and act, as the case may be, as surrogates and proctors in the said High Court of Admiralty, according to the rules and practice now prevailing and observed or hereafter to be made in and by the said High Court of Admiralty touching the admission and practising of advocates, surrogates and proctors in the said Court respectively. Advocates, surrogates and proctors of Court of Arches to be admitted in Court of Admiralty.

3. And be it enacted, that after the passing of this Act, whenever any ship or vessel shall be under arrest by process issuing from the said High Court of Admiralty, or the proceeds of any ship or vessel having been so arrested shall have been brought into and be in the registry of the said Court, in either such case the said Court shall have full jurisdiction to take cognizance of all claims and causes of action of any person in respect of any mortgage of such ship or vessel, and to decide any suit instituted by any such person in respect of any such claims or cause of action respectively. Whenever a vessel shall be arrested or proceeds brought into registry the Court to have jurisdiction over claims of mortgages.

4. And be it enacted, that the said Court of Admiralty shall have jurisdiction to decide all questions as to the title to or ownership of any ship or vessel, or the proceeds thereof remaining in the registry, arising in any cause of possession, salvage, damage, wages or bottomry, which shall be instituted in the said Court after the passing of this Act. Court to decide questions of title in all causes of possession, salvage, &c.

5. And be it enacted, that whenever any award shall have been made by any justices of the peace or by any person nominated by them, or within the jurisdiction of the cinque ports by any commissioners, respecting the amount of salvage to be paid, or respecting any claims and demands for services or compensation, which such justices and commissioners within their several jurisdictions are empowered to decide under the provisions of two Acts passed in the second year of the reign of King George the Fourth, for remedying certain defects relative to the adjustment of salvage, or whenever any sum shall have been voluntarily paid on any such account of salvage, services or compensation, it shall be lawful for any person interested in the distribution of the amount awarded or paid to require distribution to be forthwith made thereof, and the person or persons by whom such amount shall be awarded, or in the case of voluntary payment the person by whom the same shall have been received, shall forthwith proceed to the distribution thereof among the several persons entitled thereunto, to be certified in the case of an award under the hand of the person or persons by whom such amount shall be awarded, and an account of every such distribution shall be annexed to the award; and if any person interested in the distribution shall think himself aggrieved on account of its not being made Appeals may be made to the Court of Admiralty on distribution.

A.D. 1840. according to the award, or otherwise, it shall be lawful for him, within fourteen days after the making of the award, or payment of the money, but not afterwards, to take out a monition from the said High Court of Admiralty, requiring any person being in possession of any part of the amount awarded or voluntarily paid to bring in the same, to abide the judgment of the Court concerning the distribution thereof; and in the case of an award the person or persons by whom the award shall have been made shall, upon monition, send without delay to the said High Court of Admiralty a copy of the proceedings before him and them, and of the award, on unstamped paper, certified under his or their hand; and the same shall be admitted by the Court as evidence, and the amount awarded or voluntarily paid shall be distributed according to the judgment of the Court.

The Court, in certain cases, may adjudicate on claims for services and necessities, although not on the high seas.

Evidence may be taken *vide* *roce* in open Court.

Evidence may be taken *vide* *roce* before a commissioner.

Attendance of witnesses and production of papers may

6. And be it enacted, that the High Court of Admiralty shall have jurisdiction to decide all claims and demands whatsoever in the nature of salvage for services rendered to or damage received by any ship or sea-going vessel, or in the nature of towage, or for necessities supplied to any foreign ship or seagoing vessel, and to enforce the payment thereof, whether such ship or vessel may have been within the body of a county, or upon the high seas, at the time when the services were rendered or damage received, or necessities furnished, in respect of which such claim is made.

7. And be it enacted, that in any suit depending in the said High Court of Admiralty the Court (if it shall think fit) may summon before it and examine or cause to be examined witnesses by word of mouth, and either before or after examination by deposition, or before a commissioner, as hereinafter mentioned; and notes of such evidence shall be taken down in writing by the Judge or registrar, or by such other person or persons, and in such manner, as the Judge of the said Court shall direct.

8. And be it enacted, that the said Court may, if it shall think fit, in any such suit issue one or more special commissions to some person, being an advocate of the said High Court of Admiralty of not less than seven years' standing, or a barrister-at-law of not less than seven years' standing, to take evidence by word of mouth, upon oath, which every such commissioner is hereby empowered to administer, at such time or times, place or places, and as to such fact or facts, and in such manner, order and course, and under such limitations and restrictions, and to transmit the same to the registry of the said Court, in such form and manner as in and by the commission shall be directed; and that such commissioner shall be attended, and the witnesses shall be examined, cross-examined, and re-examined by the parties, their counsel, proctors or agents, if such parties, or either of them, shall think fit so to do; and such commission shall, if need be, make a special report to the Court touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto; and the said High Court of Admiralty is hereby authorized to institute such proceedings, and make such order or orders, upon such report, as justice may require, and as may be instituted or made in any case of contempt of the said Court.

9. And be it enacted, that it shall be lawful in any suit depending in the said Court of Admiralty for the Judge of the said Court, or for any such commissioner appointed in pursuance of this Act, to require the attendance of any witnesses, and the production of any

deeds, evidences, books or writings, by writ, to be issued by such judge or commissioner in such and the same form, or as nearly as may be, as that in which a writ of subpoena ad testificandum, or of subpoena duces tecum, is now issued by her Majesty's Court of Queen's Bench at Westminster; and that every person disobeying any such writ so to be issued by the said Judge or commissioner shall be considered as in contempt of the said High Court of Admiralty, and may be punished for such contempt in the said Court.

A. D. 1840.
be com-
pelled by
subpoena.

10. And be it enacted, that all the provisions of an Act passed in the fourth year of the reign of his late Majesty, intituled "An Act for the further Amendment of the Law, and better Administration of Justice," with respect to the admissibility of the evidence of witnesses interested on account of the verdict or judgment, shall extend to the admissibility of evidence in any suit pending in the said Court of Admiralty, and the entry directed by the said Act to be made on the record of judgment shall be made upon the document containing the final sentence of the said Court, and shall have the like effect as the entry on such record.

Provisions
of 8 & 4 Will.
4, c. 42, ex-
tended to
Court of
Admiralty.

11. And be it enacted, that in any contested suit depending in the said Court of Admiralty the said Court shall have power, if it shall think fit so to do, to direct a trial by jury of any issue or issues on any question or questions of fact arising in any such suit, and that the substance and form of such issue or issues shall be specified by the Judge of the said Court at the time of directing the same; and if the parties differ in drawing such issue or issues, it shall be referred to the Judge of the said Court to settle the same; and such trial shall be had before some Judge of her Majesty's Superior Courts of Common Law at Westminster, at the sittings at nisi prius in London or Middlesex, or before some Judge of assize at nisi prius, as to the said Court shall seem fit.

Power to
direct
issues.

12. And be it enacted, that the cost of such issues, or of such commission as aforesaid, as the Judge of the said High Court of Admiralty shall under this Act direct, shall be paid by such party or parties, person or persons, and be taxed by the Registrar of the said High Court of Admiralty, in such manner as the said Judge shall direct, and that payment of such costs shall be enforced in the same manner as costs between party and party may be enforced in other proceedings in the said Court.

Costs of
issues and
commis-
sions to be
in the dis-
cretion
of the Court.

13. And be it enacted, that the said Court of Admiralty, upon application to be made within three calendar months after the trial of any such issue by any party concerned, may grant and direct one or more new trials of any such issue, and may order such new trial to take place in the manner hereinbefore directed with regard to the first trial of such issue, and may by order of the same Court direct such costs to be paid as to the said Court shall seem fit upon any application for a new trial, or upon any new trial, or second or other new trial, and may direct by whom and to whom and at what times and in what manner such costs shall be paid.

Power to
direct new
trials.

14. And be it enacted, that the granting or refusing to grant an issue, or a new trial of any such issue, may be matter of appeal to her Majesty in Council.

Granting or
refusing
new trial,
matter of
appeal.

15. And be it enacted, that at the trial of any issue directed by the said High Court of Admiralty, either party shall have all the like powers, rights and remedies with respect to bills of exceptions as parties impleaded before justices may have, by virtue of the statute

Bills of ex-
ceptions to
be allowed
on trials of
issues.

A.D. 1840. made in that behalf in the thirteenth year of the reign of King Edward the First, with respect to exceptions alleged by them before such justices, or by any other statute made in the like behalf; and every such bill of exceptions, sealed with the seal of the Judge or Judges to whom such exceptions shall have been made, shall be annexed to the record of the trial of the said issue.

Record of
the issue to
be trans-
mitted to
the Court of
Admiralty.

16. And be it enacted, that the record of the said issue, and of the verdict therein, shall be transmitted by the associate or other proper officer to the registrar of the said Court of Admiralty; and the verdict of the jury upon any such issue (unless the same shall be set aside) shall be conclusive upon the said Court and upon all such persons; and in all further proceedings in the cause in which such fact is found the said Court shall assume such fact to be as found by the jury.

Provisions of
2 & 3 Will. 4,
c. 92, as to
appeals to
apply to
suits in
Court of
Admiralty
under this
Act.

17. And be it enacted, that every person who, if this Act had not been passed, might have appealed and made suit to her Majesty in Council against any proceeding, decree, or sentence of the said High Court of Admiralty under or by virtue of an Act passed in the third year of the reign of his late Majesty, intituled "An Act for Transferring the Powers of the High Court of Delegates, both in Ecclesiastical and Maritime Causes, to his Majesty in Council," may in like manner appeal and make suits to her Majesty in Council against the proceedings, decrees and sentences of the said Court in all suits instituted and proceedings had in the same by virtue of the provisions of this Act, and that all the provisions of the said last-mentioned Act shall apply to all appeals and suits against the proceedings, decrees and sentences of the said Court in suits instituted and proceedings had by virtue of the provisions of this Act; and such appeals and suits shall be proceeded in in the manner and form provided by an Act passed in the fourth year of the reign of his late Majesty, intituled "An Act for the better Administration of Justice in His Majesty's Privy Council;" and all the provisions of the said last-mentioned Act relating to appeals and suits from the High Court of Admiralty shall be applied to appeals and suits from the said Court in suits instituted and proceedings had by virtue of the provisions of this Act: provided always, that in any such appeal the notice of evidence taken as hereinbefore provided by or under the direction of the Judge of the said High Court of Admiralty shall be certified by the said Judge of her Majesty in Council, and shall be admitted to prove the oral evidence given in the said Court of Admiralty, and that no evidence shall be admitted on such appeal to contradict the notes of evidence so taken and certified as aforesaid, but this proviso shall not enure to prevent the judicial committee of the Privy Council from directing witnesses to be examined and re-examined upon such facts as to the committee shall seem fit, in the manner directed by the last-recited Act.

3 & 4 Will. 4,
c. 41, to
apply in
same
manner.

Certified
notes of
evidence
taken may
be admitted
on appeal.

Power for
Judge of
Admiralty
to make
rules of
Court.

18. And be it enacted, that it shall be lawful for the Judge of the High Court of Admiralty from time to time to make such rules, orders and regulations respecting the practice and mode of proceeding of the said Court, and the conduct and duties of the officers and practitioners therein, as to him shall seem fit, and from time to time to repeal or alter such rules, orders or regulations: provided always, that no such rules, orders or regulations shall be of any force or effect until the same shall have been approved by her Majesty in Council.

Protection
of the Judge

19. And be it declared and enacted, that no action shall lie against the Judge of the said High Court of Admiralty for error in judgment,

and that the said Judge shall be entitled to and have all privileges and protections in the exercise of his jurisdiction as Judge of the said Court which by law appertain to the Judges of her Majesty's Superior Courts of Common Law in the exercise of their several jurisdictions. **A. D. 1840.**

20. And be it enacted, that the keeper for the time being of every common gaol or prison shall be bound to receive and take into his custody all persons who shall be committed thereunto by the said Court of Admiralty, or who shall be committed thereunto by any coroner appointed by the Judge of the said Court of Admiralty, upon any inquest taken within or upon the high seas adjacent to the county or other jurisdiction to which such gaol or prison belongs; and every keeper of any gaol or prison who shall refuse to receive into his custody any person so committed, or wilfully or carelessly suffer such person to escape and go at large without lawful warrant, shall be liable to the like penalties and consequences as if such person had been committed to his custody by any other lawful authority.

of the Court of Admiralty.

Goalers to receive prisoners committed by the Court of Admiralty or by Admiralty coroners.

21. And be it enacted, that it shall be lawful for the Judge of the said High Court of Admiralty to order the discharge of any person who shall be in custody for contempt of the said Court, for any cause other than for non-payment of money, on such conditions as to the Judge shall seem just: provided always, that the order for such discharge shall not be deemed to have purged the original contempt in case the conditions on which such order shall be made be not fulfilled.

Prisoners in contempt may be discharged.

22. And be it enacted, that the said High Court of Admiralty shall have jurisdiction to decide all matters and questions concerning booty of war, or the distribution thereof, which it shall please her Majesty, her heirs and successors, by the advice of her and their Privy Council, to refer to the judgment of the said Court; and in all matters so referred the Court shall proceed as in cases of prize of war, and the judgment of the Court therein shall be binding upon all parties concerned.

Jurisdiction to try questions concerning booty of war.

23. Provided always, and be it enacted, that nothing herein contained shall be deemed to preclude any of her Majesty's Courts of Law or Equity now having jurisdiction over the several subject matters and causes of action hereinbefore mentioned from continuing to exercise such jurisdiction as fully as if this Act had not been passed.

Jurisdiction of Courts of law and equity not taken away.

24 VICT. CAP. 10.

ADMIRALTY COURT ACT, 1861.

An Act to extend the Jurisdiction and improve the Practice of the High Court of Admiralty. **A. D. 1861.**
[17th May 1861.]

WHEREAS it is expedient to extend the jurisdiction and improve the practice of the High Court of Admiralty of England: be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "The Admiralty Court Act, 1861." **Short title.**

A.D. 1861. 2. In the interpretation and for the purposes of this Act (if not inconsistent with the context or subject) the following terms shall have the respective meanings hereinafter assigned to them ; that is to say,

Interpreta-
tion of
terms

"Ship" shall include any description of vessel used in navigation not propelled by oars :

"Cause" shall include any cause, suit, action, or other proceeding in the Court of Admiralty.

Commence-
ment of Act.

3. This Act shall come into operation on the first day of June one thousand eight hundred and sixty-one.

As to claims
for building,
equipping,
or repairing
of ships.

4. The High Court of Admiralty shall have jurisdiction over any claim for the building, equipping, or repairing of any ship, if at the time of the institution of the cause the ship or the proceeds thereof are under arrest of the Court.

As to claims
for neces-
saries.

5. The High Court of Admiralty shall have jurisdiction over any claim for necessities supplied to any ship elsewhere than in the port to which the ship belongs, unless it is shown to the satisfaction of the Court that at the time of the institution of the cause any owner or part-owner of the ship is domiciled in England or Wales : provided always, that if in any such cause the plaintiff do not recover twenty pounds he shall not be entitled to any costs, charges, or expenses incurred by him therein, unless the Judge shall certify that the cause was a fit one to be tried in the said Court.

As to claims
for damage
to cargo
imported.

6. The High Court of Admiralty shall have jurisdiction over any claim by the owner or consignee or assignee of any bill of lading of any goods carried into any port in England or Wales in any ship, for damage done to the goods or any part thereof by the negligence or misconduct of or for any breach of duty or breach of contract on the part of the owner, master, or crew of the ship, unless it is shown to the satisfaction of the Court that at the time of the institution of the cause any owner or part-owner of the ship is domiciled in England or Wales : provided always, that if in any such cause the plaintiff do not recover twenty pounds he shall not be entitled to any costs, charges, or expenses incurred by him therein, unless the Judge shall certify that the cause was a fit one to be tried in the said Court.

As to claims
for damage
by any ship

7. The High Court of Admiralty shall have jurisdiction over any claim for damage done by any ship.

High Court
of Admi-
ralty to
decide ques-
tions as to
ownership,
&c., of ships.

8. The High Court of Admiralty shall have jurisdiction to decide all questions arising between the co-owners, or any of them, touching the ownership, possession, employment, and earnings of any ship registered at any port in England or Wales, or any share thereof, and may settle all accounts outstanding and unsettled between the parties in relation thereto, and may direct the said ship or any share thereof to be sold, and may make such order in the premises as to it shall seem fit.

Extending
17 & 18 Vict.
c. 104, as to
claims for
salvage of
life.

9. All the provisions of "The Merchant Shipping Act, 1854," in regard to salvage of life from any ship or boat within the limits of the United Kingdom, shall be extended to the salvage of life from any British ship or boat, wheresoever the services may have been rendered, and from any foreign ship or boat, where the services have been rendered either wholly or in part in British waters.

As to claims
for wages
and for dis-

10. The High Court of Admiralty shall have jurisdiction over any claim by a seaman of any ship for wages earned by him on board

the ship, whether the same be due under a special contract or otherwise, and also over any claim by the master of any ship for wages earned by him on board the ship, and for disbursements made by him on account of the ship : provided always, that if in any such cause the plaintiff do not recover fifty pounds, he shall not be entitled to any costs, charges, or expenses incurred by him therein, unless the Judge shall certify that the cause was a fit one to be tried in the said Court.

A.D. 1861.

disbursements by master of a ship.

11. The High Court of Admiralty shall have jurisdiction over any claim in respect of any mortgage duly registered according to the provisions of "The Merchant Shipping Act, 1854," whether the ship or the proceeds thereof be under arrest of the said Court or not.

3 & 4 Vict. c. 65, in regard to mortgages extended to Court of Admiralty. Sections 62 to 65 of 17 & 18 Vict. c. 104, extended to Court of Admiralty.

12. The High Court of Admiralty shall have the same powers over any British ship, or any share therein, as are conferred upon the High Court of Chancery in England by the sixty-second, sixty-third, sixty-fourth, and sixty-fifth sections of "The Merchant Shipping Act, 1854."

13. Whenever any ship or vessel, or the proceeds thereof, are under arrest of the High Court of Admiralty, the said Court shall have the same powers as are conferred upon the High Court of Chancery in England by the ninth part of "The Merchant Shipping Act, 1854."

Part 9 of 17 & 18 Vict. c. 104, extended to Court of Admiralty. Court to be a Court of Record.

14. The High Court of Admiralty shall be a Court of Record for all intents and purposes.

15. All decrees and orders of the High Court of Admiralty, whereby any sum of money, or any costs, charges, or expenses, shall be payable to any person, shall have the same effect as judgments in the Superior Courts of Common Law, and the persons to whom any such moneys, or costs, charges, or expenses, shall be payable, shall be deemed judgment creditors, and all powers of enforcing judgments possessed by the Superior Courts of Common Law, or any Judge thereof, with respect to matters depending in the same Courts, as well against the ships and goods arrested as against the person of the judgment debtor, shall be possessed by the said Court of Admiralty with respect to matters therein depending ; and all remedies at common law possessed by judgment creditors shall be in like manner possessed by persons to whom any moneys, costs, charges, or expenses are by such orders or decrees of the said Court of Admiralty directed to be paid.

Decrees and orders of Court of Admiralty to have effect of judgments at common law.

16. If any claim shall be made to any goods or chattels taken in execution under any process of the High Court of Admiralty, or in respect of the seizure thereof, or any Act or matter connected therewith, or in respect of the proceeds or value of any such goods or chattels, by any landlord for rent, or by any person not being the party against whom the process has issued, the registrar of the said Court may, upon application of the officer charged with the execution of the process, whether before or after any action brought against such officer, issue a summons calling before the said Court both the party issuing such process and the party making the claim, and thereupon any action which shall have been brought in any of her Majesty's Superior Courts of Record, or in any local or inferior Court, in respect of such claim, seizure, act, or matter as aforesaid, shall be stayed, and the Court in which such action shall have been brought, or any Judge thereof, on proof of the issue of such summons, and that the

As to claims to goods taken in execution.

A.D. 1861. goods and chattels were so taken in execution, may order the party bringing the action to pay the costs of all proceedings had upon the action after issue of the summons out of the said Admiralty Court, and the Judge of the said Admiralty Court shall adjudicate upon the claim, and make such order between the parties in respect thereof and of the costs of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in the said Court. Where any such claim shall be made as aforesaid the claimant may deposit with the officer charged with the execution of the process either the amount or value of the goods claimed, the value to be fixed by appraisement in case of dispute, to be by the officer paid into Court to abide the decision of the Judge upon the claim, or the sum which the officer shall be allowed to charge as costs for keeping possession of the goods until such decision can be obtained, and in default of the claimant so doing the officer may sell the goods as if no such claim had been made, and shall pay into Court the proceeds of the sale, to abide the decision of the Judge.

Powers of
Superior
Courts ex-
tended to
Court of
Admiralty.

17. The Judge of the High Court of Admiralty shall have all such powers as are possessed by any of the Superior Courts of Common Law or any Judge thereof to compel either party in any cause or matter to answer interrogatories, and to enforce the production, inspection, and delivery of copies of any document in his possession or power.

Party in
Court of
Admiralty
may apply
for an order
for inspec-
tion by
Trinity
masters.

18. Any party in a cause in the High Court of Admiralty shall be at liberty to apply to the said Court for an order for the inspection by the Trinity masters or others appointed for the trial of the said cause, or by the party himself or his witnesses, of any ship or other personal or real property, the inspection of which may be material to the issue of the cause, and the Court may make such order in respect of the costs arising thereout as to it shall seem fit.

Admission
of docu-
ments.

19. Any party in a cause in the High Court of Admiralty may call on any other party in the cause by notice in writing to admit any document, saving all just exceptions, and in case of refusal or neglect to admit, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the Judge shall certify that the refusal to admit was reasonable.

Power to
Court of
Admiralty
when per-
sonal service
of citation
has not been
effected to
order parties
to proceed.

20. Whenever it shall be made to appear to the Judge of the High Court of Admiralty that reasonable efforts have been made to effect personal service of any citation, monition, or other process issued under seal of the said Court, and either that the same has come to the knowledge of the party thereby cited or monished, or that he wilfully evades service of the same, and has not appeared thereto, the said Judge may order that the party on whose behalf the citation, monition, or other process was issued be at liberty to proceed as if personal service had been effected, subject to such conditions as to the Judge may seem fit, and all proceedings thereon shall be as effectual as if personal service of such citation, monition, or other process had been effected.

As to the
service of
subpoena
out of Eng-
land and
Wales.

21. The service in any part of Great Britain or Ireland of any writ of subpoena ad testificandum or subpoena duces tecum, issued under seal of the High Court of Admiralty, shall be as effectual as if the same had been served in England or Wales.

Power to
issue new

22. Any new writ or other process necessary or expedient for giving effect to any of the provisions of this Act may be issued from

the High Court of Admiralty in such form as the Judge of the said A.D. 1861. Court shall from time to time direct.

23. All the powers possessed by any of the Superior Courts of Common Law or any Judge thereof, under the Common Law Procedure Act, 1854, and otherwise, with regard to references to arbitration, proceedings thereon, and the enforcing of awards of arbitrators, shall be possessed by the Judge of the High Court of Admiralty in all causes and matters depending in the said Court, and the registrar of the said Court of Admiralty shall possess as to such matters the same powers as are possessed by the masters of the said Superior Courts of Common Law in relation thereto.

24. The registrar of the High Court of Admiralty shall have the same powers under the fifteenth section of the Merchant Shipping Act, 1854, as are by the said section conferred on the masters of her Majesty's Court of Queen's Bench in England and Ireland.

25. The registrar of the High Court of Admiralty may exercise, with reference to causes and matters in the said Court, the same powers as any surrogate of the Judge of the said Court sitting in chambers might or could have heretofore lawfully exercised; and all powers and authorities by this or any other Act conferred upon or vested in the registrar of the said High Court of Admiralty may be exercised by any deputy or assistant registrar of the said Court.

26. The registrar of the said Court of Admiralty shall have power to administer oaths in relation to any cause or matter depending in the said Court; and any person who shall wilfully depose or affirm falsely in any proceeding before the registrar or before any deputy or assistant registrar of the said Court, or before any person authorized to administer oaths in the said Court, shall be deemed to be guilty of perjury, and shall be liable to all the pains and penalties attaching to wilful and corrupt perjury.

27. Any advocate, barrister-at-law, proctor, attorney, or solicitor of ten years' standing may be appointed registrar or assistant or deputy registrar of the said Court.

28. Any advocate, barrister-at-law, proctor, attorney, or solicitor may be appointed an examiner of the High Court of Admiralty.

29. Any person who shall have paid on his admission in any Court as a proctor, solicitor, or attorney the full stamp duty of twenty-five pounds, and who has been or shall hereafter be admitted a proctor, solicitor, or attorney (if in other respects entitled to be so admitted), shall be liable to no further stamp duty in respect of such subsequent admission.

30. Any proctor of the High Court of Admiralty may act as agent of any attorney or solicitor, and allow him to participate in the profits of and incident to any cause or matter depending in or connected with the said Court; and nothing contained in the Act of the fifty-fifth year of the reign of King George the Third, chapter one hundred and sixty, shall be construed to extend to prevent any proctor from so doing, or to render him liable to any penalty in respect thereof.

31. The Act passed in the second year of the reign of King Henry the Fourth, intituled "A Remedy for Him who is Wrongfully Pursued in the Court of Admiralty," is hereby repealed.

32. Any party aggrieved by any order or decree of the Judge of the said Court of Admiralty, whether made *ex parte* or otherwise, may, with the permission of the Judge, appeal therefrom to her

writes or other process.*

Judge and registrar to have same power as to arbitration as Judges and masters at common law.

Section 15 of 17 & 18 Vict. c. 104, extended to registrar of Court of Admiralty.

Powers of registrar and of deputy or assistant registrar.

False oath or affirmation deemed perjury.

Appointment of registrar and of deputy or assistant registrar.

Appointment of examiners.

Stamp duty not payable on subsequent admissions of proctors or solicitors.

Proctor may act as agent of solicitors.

2 Hen. 4, c. 11, repealed

Power of appeal in interlocutory matters.

A.D. 1861. Majesty in Council, as fully and effectually as from any final decree or sentence of the said Court.

Bail given
in the Court
of Admiralty
good in the Court
of Appeal.

33. In any cause in the High Court of Admiralty bail may be taken to answer the judgment as well of the said Court as of the Court of Appeal, and the said High Court of Admiralty may withhold the release of any property under its arrest until such bail has been given; and in any appeal from any decree or order of the High Court of Admiralty, the Court of Appeal may make and enforce its order against the surety or sureties who may have signed any such bail bond in the same manner as if the bail had been given in the Court of Appeal.

As to the
hearing of
causes and
cross causes.

34. The High Court of Admiralty may, on the application of the defendant in any cause of damage, and on his instituting a cross cause for the damage sustained by him in respect of the same collision, direct that the principal cause and the cross cause be heard at the same time and upon the same evidence; and if in the principal cause the ship of the defendant has been arrested, or security given by him to answer judgment, and in the cross cause the ship of the plaintiff cannot be arrested, and security has not been given to answer judgment therein, the Court may, if it think fit, suspend the proceedings in the principal cause until security has been given to answer judgment in the cross cause.

Jurisdiction
of the Court.

35. The jurisdiction conferred by this Act on the High Court of Admiralty may be exercised either by proceedings in rem or by proceedings in personam.

26 & 27 VICT. CAP. 24.

VICE-ADMIRALTY COURTS ACT, 1863.

A.D. 1863. *An Act to facilitate the Appointment of Vice-Admirals and of Officers in Vice-Admiralty Courts in her Majesty's Possessions abroad, and to confirm the past Proceedings, to extend the Jurisdiction, and to amend the Practice of those Courts.*

[8th June, 1863.]

Short title.

1. This Act may be cited for all purposes as the "Vice-Admiralty Courts Act, 1863."

Interpreta-
tion of
terms!

"Vice-Admiralty Court" shall mean any of the existing Vice-Admiralty Courts enumerated in the schedule marked A hereto annexed, or any Vice-Admiralty Court which shall hereafter be established in any British possession:

"Ship" shall include every description of vessel used in navigation not propelled by oars only, whether British or foreign:

"Cause" shall include any cause, suit, action or other proceeding instituted in any Vice-Admiralty Court.

Saving the
powers of
the Admiralty.

7. Nothing in this Act contained shall be taken to affect the power of the Admiralty to appoint any Vice-Admiral, or any Judge, registrar, marshal, or other officer of any Vice-Admiralty Court, as heretofore, by warrant from the Admiralty, and by letters patent issued under seal of the High Court of Admiralty of England.

Jurisdiction
of Vice-
Admiralty
Courts.

10. The matters in respect of which the Vice-Admiralty Courts shall have jurisdiction are as follow:

(1.) Claims for seamen's wages:

- (2.) Claims for master's wages, and for his disbursements on A.D. 1868.
account of the ship :
- (3.) Claims in respect of pilotage :
- (4.) Claims in respect of salvage of any ship, or of life or goods
therefrom :
- (5.) Claims in respect of towage :
- (6.) Claims for damage done by any ship :
- (7.) Claims in respect of bottomry or respondentia bonds :
- (8.) Claims in respect of any mortgage where the ship has been
sold by a decree of the Vice-Admiralty Court, and the
proceeds are under its control :
- (9.) Claims between the owners of any ship registered in the
possession, in which the Court is established, touching the
ownership, possession, employment, or earnings of such
ship :
- (10.) Claims for necessities supplied, in the possession in which
the Court is established, to any ship of which no owner or
part-owner is domiciled within the possession at the time of
the necessities being supplied :
- (11.) Claims in respect of the building, equipping, or repairing
within any British possession of any ship of which no owner
or part-owner is domiciled within the possession at the time
of the work being done.
11. The Vice-Admiralty Courts shall also have jurisdiction—
- (1.) In all cases of breach of the regulations and instructions
relating to her Majesty's navy at sea :
- (2.) In all matters arising out of droits of Admiralty.
12. Nothing contained in this Act shall be construed to take away
or restrict the jurisdiction conferred upon any Vice-Admiralty Court
by any Act of Parliament in respect of seizures for breach of the
revenue, customs, trade, or navigation laws, or of the laws relating to
the abolition of the slave trade, or to the capture and destruction
of pirates and piratical vessels, or any other jurisdiction now lawfully
exercised by any such Court, or any jurisdiction now lawfully exer-
cised by any other Court within her Majesty's dominions (a).
13. The jurisdiction of the Vice-Admiralty Courts, except where
it is expressly confined by this Act to matters arising within the
possession in which the Court is established, may be exercised,
whether the cause or right of action has arisen within or beyond
the limits of such possession.
14. Her Majesty may, by order in council, from time to time
establish rules touching the practice to be observed in the Vice-
Admiralty Courts, as also tables of the fees to be taken by the
officers and practitioners thereof for all acts to be done therein, and
may repeal and alter the existing and all future rules and tables of
fees, and establish new rules and tables of fees in addition thereto,
or in lieu thereof.
15. A copy of any rules or tables of fees which may at any time
be established shall be laid before the House of Commons within
three months from the establishing thereof, or if Parliament shall
not be then sitting, or if the session shall terminate within one
month from that date, then within one month after the commence-
ment of the next session.

Jurisdiction
of Vice-
Admiralty
Courts.

Nothing to
restrict
existing
jurisdic-
tions.

As to
matters
arising be-
yond limits
of colony.

Her Majesty
empowered
to establish
and alter
rules and
tables of
fees.

Rules and
tables of
fees to be
laid before
the House of
Commons.

(a) See Appellate Jurisdiction, 1876, 39 & 40 Vict. c. 59, s. 23.

A.D. 1863.

To be entered in the records of the Courts.

To be hung up in Court, &c.

Established fees to be the only fees taken

Taxation may be revised by the High Court of Admiralty.

Registrar may administer oaths.

As to the hearing of cross causes.

No appeal save from final sentence or order.

Appeal to be made within six months.

Acts repealed. Saving rules established under 2 & 3 W. 4, c. 51.

16. The rules and tables of fees in force in any Vice-Admiralty Court shall, as soon as possible after they have been received in the British possession in which the Court is established, be entered by the registrar in the public books or records of the Court, and the books or records in which they are so entered shall at all reasonable times be open to the inspection of the practitioners and suitors in the Court.

17. A copy of the rules and tables of fees in force in any Vice-Admiralty Court shall be kept constantly hung up in some conspicuous place as well in the Court as in the office of the registrar.

18. The fees established for any Vice-Admiralty Court shall, after the date fixed for them to come into operation, be the only fees which shall be taken by the officers and practitioners of the Court.

19. Any person who shall feel himself aggrieved by the charges of any of the practitioners in any Vice-Admiralty Court, or by the taxation thereof by the officers of the Court, may apply to the High Court of Admiralty of England to have the charges taxed, or the taxation thereof revised.

20. The registrar of any Vice-Admiralty Court shall have power to administer oaths in relation to any matter depending in the Court; and any person who shall wilfully swear falsely in any proceeding before the registrar, or before any other person authorized to administer oaths in the Court, shall be deemed guilty of perjury, and shall be liable to all the penalties attaching to wilful and corrupt perjury.

21. If a cause of damage by collision be instituted in any Vice-Admiralty Court, and the defendant institute a cross cause in respect of the same collision, the Judge may, on application of either party, direct both causes to be heard at the same time and on the same evidence; and if the ship of the defendant in one of the causes has been arrested, or security given by him to answer judgment, but the ship of the defendant in the other cause cannot be arrested, and security has not been given to answer judgment therein, the Court may, if it think fit, suspend the proceedings in the former cause until security has been given to answer judgment in the latter cause.

22. The appeal from a decree or order of a Vice-Admiralty Court lies to her Majesty in Council; but no appeal shall be allowed, save by permission of the judge, from any decree or order not having the force or effect of a definitive sentence or final order.

23. The time for appealing from any decree or order of a Vice-Admiralty Court shall, notwithstanding any existing enactment to the contrary, be limited to six months from the date of the decree or order appealed from; and no appeal shall be allowed where the petition of appeal to her Majesty shall not have been lodged in the registry of the High Court of Admiralty and of appeals within that time, unless her Majesty in Council shall, on the report and recommendation of the Judicial Committee of the Privy Council, be pleased to allow the appeal to be prosecuted, notwithstanding that the petition of appeal has not been lodged within the time prescribed.

24. The Acts enumerated in the schedule hereto annexed marked B are hereby repealed, to the extent therein mentioned, but the repeal thereof shall not affect the validity of any rules, orders, regulations, or tables of fees heretofore established and now in force, in pursuance of the Act of the second and third William the Fourth, chapter fifty-one; but such rules, orders, regulations, and tables of fees shall continue in force until repealed or altered under the provisions of this Act.

SCHEDULE B.

A.D. 1868.

ACTS AND PARTS OF ACTS REPEALED.

Reference to Act.	Title of Act.	Extent of Repeal.
56 Geo. III. c. 82.	An Act to render valid the Judicial Acts of Surrogates of Vice-Admiralty Courts abroad, during Vacancies in Office of Judges of such Courts.	The whole Act, save as regards Her Majesty's Possessions in India.
5 Geo. IV. c. 113.	An Act to amend and consolidate the Laws relating to the Abolition of the Slave Trade.	Section 29, save as above.
2 & 3 Will. IV. c. 51.	An Act to regulate the Practice and the Fees in the Vice-Admiralty Courts abroad, and to obviate doubts as to their Jurisdiction.	The whole Act, save as above.
6 & 7 Vict. c. 38.	An Act to make further regulations for facilitating the hearing Appeals and other matters by the Judicial Committee of the Privy Council.	Section 11, so far as it relates to Appeals from Vice-Admiralty Courts, save as above.
17 & 18 Vict. c. 37.	An Act for establishing the Validity of certain Proceedings in Her Majesty's Court of Vice-Admiralty in Mauritius.	The whole Act.

31 & 32 VICT. CAP. 71.

COUNTY COURTS ADMIRALTY JURISDICTION ACT, 1868.

An Act for conferring Admiralty Jurisdiction on the County Courts. A.D. 1868.
[31st July, 1868.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the County Courts Admiralty Jurisdiction Act, 1868. Short title.

2. If at any time after the passing of this Act it appears to her Majesty in Council, on the representation of the Lord Chancellor, expedient that any County Court should have Admiralty jurisdiction, it shall be lawful for her Majesty by Order in Council, to appoint

Appoint-
ment of
County
Courts for
Admiralty
purposes.

A.D. 1868. that Court to have Admiralty jurisdiction accordingly, and to assign to that Court as its district for Admiralty purposes any part or parts of any one or more district or districts of County Courts; and the district so constituted for that Court, with the parts of the sea (if any) adjacent to that district to a distance of three miles from the shore thereof, shall be deemed its district for Admiralty purposes; and accordingly the Judge and all officers of the Court shall have jurisdiction and authority for those purposes throughout that district, as if the same was the district of the Court for all purposes; and, from a time to be specified in each such order, this Act shall have effect in and throughout the district so constituted; and any such order may be from time to time varied as seems expedient; and a County Court so appointed to have Admiralty jurisdiction, and no other County Court, shall, for the purposes of this Act, be deemed a County Court having Admiralty jurisdiction: Provided that no Judge of a County Court, except the Judges of the London Court, shall have jurisdiction in the City of London.

Extent of
Admiralty
jurisdiction
of County
Courts.

3. Any County Court having Admiralty jurisdiction shall have jurisdiction, and all powers and authorities relating thereto, to try and determine, subject and according to the provisions of this Act, the following causes (in this Act referred to as Admiralty causes):

- (1.) As to any claim for salvage—any cause in which the value of the property saved does not exceed one thousand pounds, or in which the amount claimed does not exceed three hundred pounds:
- (2.) As to any claim for towage, necessities, or wages—any cause in which the amount claimed does not exceed one hundred and fifty pounds:
- (3.) As to any claim for damage to cargo, or damage by collision—any cause in which the amount claimed does not exceed three hundred pounds:
- (4.) Any cause in respect of any such claim or claims as aforesaid, but in which the value of the property saved or the amount claimed is beyond the amount limited as above mentioned, when the parties agree by a memorandum signed by them or by their attorneys or agents that any County Court having Admiralty jurisdiction, and specified in the memorandum, shall have jurisdiction.

Restrictions
on County
Court juris-
diction in
certain
cases.

4. Nothing in this Act, or in any Order in Council under it, shall confer on a County Court jurisdiction in any prize cause, or in any other matter within the Naval Prize Act, 1864, or in any matter arising under any of the Acts for the suppression of the slave trade, or any Admiralty jurisdiction by way of appeal.

No County
Court other
than that
appointed
to have
jurisdiction.

5. From and after the time specified in each Order in Council under this Act appointing a County Court to have Admiralty jurisdiction within any district as the time from which this Act shall have effect in and throughout that district, no County Court, other than the County Court so appointed, shall have jurisdiction within that district in any Admiralty cause; provided that all Admiralty causes at that time pending in any County Court within that district may be continued as if no such Order in Council had been made.

As to
transfer
from
County
Court by
order of
High Court
of Admi-
rality.

6. The High Court of Admiralty of England, on motion by any party to an Admiralty cause pending in a County Court, may, if it shall think fit, with previous notice to the other party, transfer the cause to the High Court of Admiralty, and may order security for costs, or impose such other terms as to the Court may seem fit.

7. If during the progress of an Admiralty cause in a County Court it appears to the Court that the subject matter exceeds the limit in respect of amount of the Admiralty jurisdiction of the Court, the validity of any order or decree theretofore made by the Court shall not be thereby affected, but (unless the parties agree, by a memorandum signed by them or by their attorneys or agents, that the Court shall retain jurisdiction) the Court shall by order transfer the cause to the High Court of Admiralty; but that Court may, nevertheless, if the Judge of that Court in any case thinks fit, order that the cause shall be prosecuted in the County Court in which it was commenced, and it shall be prosecuted accordingly.

A.D. 1868.
As to transfer of causes by order of County Court to High Court of Admiralty.

8. If during the progress of an Admiralty cause in a County Court it shall appear to the Court that the cause could be more conveniently prosecuted in some other County Court, or in the High Court of Admiralty of England, the Court may by order transfer it to such other County Court, or to the High Court of Admiralty of England, as the case may be, and the cause shall thenceforward be so prosecuted accordingly.

As to transfer of causes to other County Courts or Court of Admiralty.

9. If any person shall take in the High Court of Admiralty of England, or in any Superior Court, proceedings which he might, without agreement, have taken in a County Court, except by order of the Judge of the High Court of Admiralty or of such Superior Court or of a County Court having Admiralty jurisdiction, and shall not recover a sum exceeding the amount to which the jurisdiction of the County Court in that Admiralty cause is limited by this Act, and also if any person without agreement shall, except by order as aforesaid, take proceedings as to salvage in the High Court of Admiralty or in any Superior Court in respect of property saved, the value of which when saved does not exceed one thousand pounds, he shall not be entitled to costs, and shall be liable to be condemned in costs, unless the Judge of the High Court of Admiralty or of a Superior Court before whom the cause is tried or heard shall certify that it was a proper Admiralty cause to be tried in the High Court of Admiralty of England or in a Superior Court.

Restrictions on proceedings in the Court of Admiralty or Superior Court.

10. In an Admiralty cause in a County Court the cause shall be heard and determined in like manner as ordinary civil causes are now heard and determined in County Courts; save and except that in any Admiralty cause of salvage, towage, or collision the County Court Judge shall, if he think fit, or on the request of either party to such cause, be assisted by two nautical assessors in the same way as the Judge of the High Court of Admiralty is now assisted by nautical assessors.

Powers, &c., of Judges and registrars.

11. In any such Admiralty cause as last aforesaid it shall be lawful for the Judge of the County Court, if he think fit, and he shall, upon request of either party, summon to his assistance in such manner as general orders shall direct, two nautical assessors, and such nautical assessors shall attend and assist accordingly.

Power to Judge of County Court to summon nautical assessors to his assistance.

12. The decree of the County Court in an Admiralty cause shall be enforced against the person or persons summoned as the defendant or defendants in the same manner as the decrees of the said Court are enforced in ordinary civil causes, save and except as in this Act otherwise provided.

Decrees in County Courts in Admiralty causes to have same force as those in civil causes. Admiralty causes to be heard at usual courts

13. The Judge of every County Court having Admiralty jurisdiction shall hear and determine Admiralty causes at the usual Courts held within his jurisdiction, or at special Courts to be held by him, and which he is hereby required to hold as soon as may be after he shall have had notice of an Admiralty cause having arisen within the jurisdiction of his Court.

A.D. 1868.

Appoint-
ment of
assessors in
County
Court.

Attendance
of assessors.

Removal of
assessors.

Remunera-
tion of re-
gistrars.

Scale of
costs.

Power to
registrars to
administer
oaths and
take evi-
dence.

Evidence
before
registrar
receivable in
Admiralty
Court.

As to pro-
ceedings in
County
Court for
commence-
ment of
cause.

14. The registrar of each County Court having Admiralty jurisdiction shall from time to time frame a list, to be approved by the Judge of the High Court of Admiralty before whom the same shall be laid by the County Court Judge, and without whose approval it shall have no validity, of assessors, of persons of nautical skill and experience residing or having places of business within the district of the County Court, to act as assessors in that Court, and shall cause the list to be published in the "London Gazette."

15. Every person named in the list of assessors so framed and approved shall attend the County Court under such circumstances, and in such rotation, and subject to such regulations, and shall receive such fees for his attendance, as general orders shall direct, and for every wilful non-attendance shall be liable, at the discretion of the Court, to a penalty not exceeding five pounds.

16. Every assessor named in such list shall hold his office until a new list of assessors shall have been framed and approved as afore-said, or until he shall resign his appointment.

17. The registrars of the County Courts shall be remunerated for their duties in Admiralty causes by receiving for their own use such fees as general orders shall direct.

18. A scale of costs and charges in Admiralty causes in the County Courts shall be prescribed by general orders.

19. The registrar of a County Court shall have power to administer oaths in relation to any Admiralty cause in a County Court; and any person who shall wilfully depose or affirm falsely before the registrar in any Admiralty cause shall be deemed to be guilty of perjury, and shall be liable to all the pains and penalties attaching to wilful and corrupt perjury.

20. Evidence taken in any Admiralty cause before the registrar of a County Court, as the Judge of a County Court or general orders shall direct, shall be received as evidence in any other County Court, saving all just exceptions; and the registrar of any County Court shall, for the purpose of the examination of any witnesses within the district of that Court, have all and the like powers and authorities of an examiner of the High Court of Admiralty of England, and evidence taken by him in that capacity shall be received as evidence in the High Court of Admiralty of England, saving all just exceptions.

21. Proceedings in an Admiralty cause shall be commenced—

- (1.) In the County Court having Admiralty jurisdiction within the district of which the vessel or property to which the cause relates is at the commencement of the proceedings:
- (2.) If the foregoing rule be not applicable, then in the County Court having Admiralty jurisdiction in the district of which the owner of the vessel or property to which the cause relates, or his agent in England, resides, or if such owner or agent does not reside within any such district, then in the County Court having Admiralty jurisdiction the district whereof is nearest to the place where such owner or agent resides:
- (3.) If for any reason the last foregoing rule is not applicable or cannot be acted on, then in such County Court having Admiralty jurisdiction as general orders direct:
- (4.) In any case in the County Court or one of the County Courts having Admiralty jurisdiction in which the parties by a memorandum, signed by them or by their attorneys or agents, agree shall have jurisdiction in the cause.

22. In an Admiralty cause in a County Court if evidence be given **A.D. 1868.** to the satisfaction of the Judge, or in his absence the registrar of the Court, that it is probable that the vessel or property to which the cause relates will be removed out of the jurisdiction of the Court before the plaintiff's claim is satisfied, it shall be lawful for the said Judge, or in his absence for the registrar, to issue a warrant for the arrest and detention of the said vessel or property, unless or until bail to the amount of the claim made in such cause, and to the reasonable costs of the plaintiff in such cause, be entered into and perfected, according to general orders, by or on behalf of the owner of the vessel or property or his agent, or other the defendant in such cause; and, except as in this section expressly provided, there shall be no arrest or detention of a vessel or property in an Admiralty cause in a County Court otherwise than in execution. Limitation of arrest.

23. For the execution of any decree or order of a County Court in an Admiralty cause the Court may order, and the registrar on such order may seal and issue, and any officer of any County Court may execute, process according to general orders; provided that where under such process a vessel or property would or might be sold, then, if the owner of the vessel or property desires that the sale should be conducted in the High Court of Admiralty instead of in the County Court, he shall be entitled, on security for costs being first given, and subject and according to such other provisions as general orders direct, to obtain an order of the County Court for transfer of the proceedings for sale, with or without (as the Judge of the County Court thinks fit) the transfer of the subsequent proceedings in the cause, to the High Court of Admiralty, which Court shall have jurisdiction and all powers and authorities relating thereto accordingly. Power to issue process.

24. Such decrees and orders of County Courts in Admiralty causes, as general orders shall direct, shall be registered with the registrar of County Court judgments in London in such manner as general orders shall direct. Registration of decrees and orders.

25. The Court of Passage of the borough of Liverpool shall, upon an Order in Council being made which shall appoint the County Court of Lancashire holden at Liverpool to have Admiralty jurisdiction, have the like jurisdiction, powers, and authorities as by that order are conferred on the said County Court; but nothing herein shall be deemed to enlarge the area over which the jurisdiction of the Court of Passage extends, or to alter the rules and regulations for holding the said Court, or to take away or restrict any jurisdiction, power, or authority already vested in that Court; and fees received in that Court under this Act shall be dealt with as fees received in that Court under its ordinary jurisdiction. Concurrent jurisdiction of the Court of Passage.

26. An appeal may be made to the High Court of Admiralty of England from a final decree or order of a County Court in an Admiralty cause, and, by permission of the Judge of the County Court, from any interlocutory decree or order therein, on security for costs being first given, and subject to such other provisions as general orders shall direct. Appeal to Court of Admiralty.

27. No appeal shall be allowed unless the instrument of appeal is lodged in the registry of the High Court of Admiralty within ten days from the date of the decree or order appealed from, but the Judge of the High Court of Admiralty of England may, on sufficient cause being shown to his satisfaction for such omission, allow an appeal to be prosecuted, notwithstanding that the instrument of appeal has not been lodged within that time. Time for appeal.

- A.D. 1868.** **28.** No appeal shall be allowed if, before the decree or order is made, the parties shall have agreed by a memorandum signed by them or by their attorneys or agents, that the decree or order shall be final ; and any such agreement need not be stamped, except in respect of any fee imposed by general orders.
- Agreement not to appeal.**
- 29.** There shall be no appeal from a decree or order of the High Court of Admiralty of England made on appeal from a County Court, except by express permission of the Judge of the High Court of Admiralty.
- Asto appeals to the Queen in council.**
- 30.** On an appeal under this Act, when the appellant is unsuccessful, he shall pay the costs of the appeal, unless the Appellate Court shall otherwise direct.
- Costs of appeal.**
- 31.** No appeal shall be allowed unless the amount decreed or ordered to be due exceeds the sum of fifty pounds.
- 32.** On an appeal under this Act, the Judge of the High Court of Admiralty, if it appears to him expedient that any sale decreed or ordered to be made of the vessel or property to which the cause relates should be conducted in the High Court of Admiralty instead of in the County Court from which the appeal is brought, may direct the transfer of the proceedings for sale, with or without the transfer of the subsequent proceedings in the cause, to the High Court of Admiralty, which Court shall have jurisdiction, and all powers and authorities relating thereto accordingly.
- 33.** In all cases which shall arise within the jurisdiction of the Cinque Ports as defined by the Act First and Second George the Fourth, chapter seventy-six, section eighteen, causes may be transferred by the County Court and appeals made to the Court of Admiralty of the Cinque Ports in lieu of the High Court of Admiralty ; and in the case of appeals the instrument of appeal shall be lodged in the registry of the Cinque Ports, and the same discretion vested in the judge official and commissary of the said Cinque Ports Court as is by this Act vested in the Judge of the High Court of Admiralty.
- 34.** This Act shall be read as one Act with so much of the County Courts Act, 1846, and the Acts amending or extending the same, as is now in force.
- 35.** General orders shall be from time to time made under this Act for the purposes in this Act directed, and for regulating the practice and procedure of the Admiralty jurisdiction of the County Courts, the forms of processes and proceedings therein or issuing therefrom, and the days and places of sittings for Admiralty causes, the duties of the Judges and officers thereof, and the fees to be taken therein.
- 36.** General orders under this Act shall be made by the Lord Chancellor, with the advice and assistance of the Judge of the High Court of Admiralty of England, and, as far as they relate to fees, or to the receipt and expenditure of and accounting for money, with the approval of the Commissioners of her Majesty's Treasury.
- Practice, &c., to be regulated by general orders.**
- Authority for making general orders.**
- In certain cases causes may be transferred by County Court and appeals made to Court of Admiralty of the Cinque Ports.**
- County Court Acts applied to this.**

32 & 33 VICT. CAP. 51.

A.D. 1869

**COUNTY COURTS ADMIRALTY JURISDICTION AMEND-
MENT ACT, 1869.**

An Act to amend the County Courts (Admiralty Jurisdiction) Act, 1868, and to give Jurisdiction in certain Maritime Causes.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as The County Courts Admiralty Jurisdiction Amendment Act, 1869, and shall be read and interpreted as one Act with the County Courts Admiralty Jurisdiction Act, 1868.

2. Any County Court appointed or to be appointed to have Admiralty jurisdiction shall have jurisdiction, and all powers and authorities relating thereto, to try and determine the following causes :

Extension of jurisdiction over ships and goods.

- (1.) As to any claim arising out of any agreement made in relation to the use or hire of any ship, or in relation to the carriage of goods in any ship, and also as to any claim in tort in respect of goods carried in any ship, provided the amount claimed does not exceed three hundred pounds :

- (2.) As to any cause in respect of any such claim or claims as aforesaid, but in which the amount claimed is beyond the amount limited as above mentioned, when the parties agree, by a memorandum signed by them or by their attorneys or agents, that any County Court having Admiralty jurisdiction, and specified in the memorandum, shall have jurisdiction.

If parties agree, causes in respect of claims of higher amount may be determined by County Court.

3. The jurisdiction conferred by this Act and by the County Courts Admiralty Jurisdiction Act, 1868, may be exercised either by proceedings in rem or by proceedings in personam.

Proceedings in rem or in personam.

4. The third section of the County Courts Admiralty Jurisdiction Act, 1868, shall extend and apply to all claims for damage to ships, whether by collision or otherwise, when the amount claimed does not exceed three hundred pounds.

Amendment of sec. 3 of 31 & 32 Vict. c. 71.

5. In any Admiralty or maritime cause the Judge may, if he think fit, or on the request of either party, be assisted by two mercantile assessors ; and all the provisions of the County Courts Admiralty Jurisdiction Act, 1868, with reference to nautical assessors, shall apply to the appointment, approval, summoning, and remuneration of such mercantile assessors.

As to appointment of mercantile assessors.

6. The assessor of the Court of Passage of the borough of Liverpool shall have power from time to time to make general rules and orders for regulating the practice and procedure of the Admiralty and maritime jurisdiction in the said Court, and for other purposes mentioned in section thirty-five of the County Courts Admiralty Jurisdiction Act, 1868 ; and any general rules and orders already made or hereafter to be made by the said assessor for any of the purposes aforesaid shall be of full force and effect as if the same had been made under this or the aforesaid Act.

Power of assessor of Court of Passage to make general rules and orders.

7. This Act shall come into operation on the first day of September one thousand eight hundred and sixty-nine.

Commencement of A

A.D. 1875.

39 & 39 VICT. CAP. 50.

THE COUNTY COURTS ACT, 1875.

10. There shall be no appeal from a decree or order of the High Court of Admiralty of England made on appeal from the County Court when such decree or order affirms the judgment of the County Court, except by express permission of the Judge of the High Court of Admiralty. When upon an appeal the High Court of Admiralty alters the judgment of the County Court no leave to appeal to her Majesty in council shall be necessary.

11. When an Admiralty cause has been heard in the County Court with the assistance of nautical assessors, elder brethren of the Trinity House shall be summoned to assist on the hearing of an appeal by the High Court of Admiralty, if either party shall require the same and the Judge of the High Court shall be of opinion that the assistance of the elder brethren is necessary or desirable.

17 & 18 VICT. CAP. 104.

A.D. 1854.

THE MERCHANT SHIPPING ACT, 1854.

Interpretation of certain Terms in this Act.

1. This Act may be cited for all purposes as "The Merchant Shipping Act, 1854."

"Master" shall include every person (except a pilot) having command or charge of any ship :

"Seaman" shall include every person (except masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship :

"Salvor" shall in the case of salvage services rendered by the officers or crew or part of the crew of any ship belonging to her Majesty, mean the person in command of such ship :

"Person" shall include body corporate :

"Ship" shall include every description of vessel used in navigation not propelled by oars :

"Foreign-going ship" shall include every ship employed in trading or going between some place or places in the United Kingdom, and some place or places situate beyond the following limits ; that is to say, the coasts of the United Kingdom, the islands of Guernsey, Jersey, Sark, Alderney, and Man, and the continent of Europe between the river Elbe and Brest inclusive :

"Home-trade ship" shall include every ship employed in trading or going within the following limits ; that is to say, the United Kingdom, the islands of Guernsey, Jersey, Sark, Alderney, and Man, and the continent of Europe between the river Elbe and Brest inclusive :

"Home-trade passenger ship" shall mean every home-trade ship employed in carrying passengers :

"Wreck" shall include jetsam, flotsam, lagan, and derelict found in or on the shores of the sea or any tidal water.

Commencement of Act.

A.D. 1854.

3. This Act shall come into operation on the first day of May one thousand eight hundred and fifty-five.

Exemption of Her Majesty's Ships.

4. This Act shall not, except as hereinafter specially provided, apply to ships belonging to her Majesty.

Custody of Certificate ; Delivery of Certificate may be required ; Penalty for Detention.

50. The certificate of registry shall be used only for the lawful navigation of the ship, and shall not be subject to detention by reason of any title, lien, charge, or interest whatsoever which any owner, mortgagee, or other person may have or claim to have on or in the ship described in such certificate; and if any person whatever, whether interested or not in the ship refuses on request to deliver up such certificate when in his possession or under his control to the person for the time being entitled to the custody thereof for the purposes of such lawful navigation as aforesaid, or to any registrar, officer of the customs, or other person legally entitled to require such delivery, it shall be lawful for any justice, by warrant under his hand and seal, or for any Court capable of taking cognisance of such matter, to cause the person so refusing to appear before him and to be examined touching such refusal; and unless it is proved to the satisfaction of such Justice or Court that there was reasonable cause for such refusal the offender shall incur a penalty not exceeding one hundred pounds; but if it is made to appear to such Justice or Court that the certificate is lost, the party complained of shall be discharged, and such Justice or Court shall thereupon certify that the certificate of registry is lost.

Mode of Proceeding, if detaining Party Abscond.

51. If the person charged with such detainer or refusal is proved to have absconded, so that the warrant of the Justice or process of the Court cannot be served upon him, or if he persists in his refusal to deliver the certificate, such Justice or Court shall certify the fact, and the same proceedings may then be taken as in the case of a certificate of registry mislaid, lost, or destroyed, or as near thereto as circumstances permit.

Penalty for using Improper Certificate.

52. If the master or owner of any ship uses or attempts to use for the navigation of such ship a certificate of registry not legally granted in respect of such ship, he shall be guilty of a misdemeanour, and it shall be lawful for any commissioned officer on full pay in the military or naval service of her Majesty, or any British officer of customs, or any British consular officer, to seize and detain such ship, and to bring her for adjudication before the High Court of Admiralty in England or Ireland or any Court having Admiralty jurisdiction in her Majesty's dominions; and if such Court is of opinion that such use or attempt at use has taken place, it shall pronounce such ship, with her tackle, apparel, and furniture, to be forfeited to her Majesty, and may award such portion of the proceeds arising from the sale of such ship as it may think just to the officer so bringing in the same for adjudication.

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MORTGAGES.

Mortgage of Ships and Shares therein.

66. A registered ship or any share therein may be made a security for a loan or other valuable consideration ; and the instrument creating such security, hereinafter termed a "mortgage," shall be in the form marked I in the schedule hereto, or as near thereto as circumstances permit ; and on the production of such instrument the registrar of the port at which the ship is registered shall record the same in the register book.

Mortgages to be Registered in Order of Time of Production.

67. Every such mortgage shall be recorded by the registrar in the order of time in which the same is produced to him for that purpose ; and the registrar shall, by memorandum under his hand, notify on the instrument of mortgage that the same has been recorded by him, stating the date and hour of such record.

Entry of Discharge of Mortgage.

68. Whenever any registered mortgage has been discharged, the registrar shall, on the production of the mortgage deed, with a receipt for the mortgage money endorsed thereon, duly signed and attested, make an entry in the register book to the effect that such mortgage has been discharged ; and upon such entry being made, the estate, if any, which passed to the mortgagee shall vest in the same person or persons in whom the same would, having regard to intervening acts and circumstances, if any, have vested if no such mortgage had ever been made.

Priority of Mortgages.

69. If there is more than one mortgage registered of the same ship or share therein, the mortgagees shall, notwithstanding any express, implied, or constructive notice, be entitled in priority one over the other according to the date at which each instrument is recorded in the register books, and not according to the date of each instrument itself.

Mortgagee not to be deemed Owner.

70. A mortgagee shall not by reason of his mortgage be deemed to be the owner of a ship or any share therein, nor shall the mortgagor be deemed to have ceased to be owner of such mortgaged ship or share, except in so far as may be necessary for making such ship or share available as a security for the mortgage debt.

Mortgages to have Power of Sale.

71. Every registered mortgagee shall have power absolutely to dispose of the ship or share in respect of which he is registered, and to give effectual receipts for the purchase money ; but if there are more persons than one registered as mortgagees of the same ship or share, no subsequent mortgagee shall, except under the order of some Court capable of taking cognizance of such matters, sell such ship or share without the concurrence of every prior mortgagee.

Rights of Mortgagee not affected by any Act of Bankruptcy of Mortgageor. **A.D. 1854.**

72. No registered mortgage of any ship or of any share therein shall be affected by any act of bankruptcy committed by the mortgagor after the date of the record of such mortgage, notwithstanding such mortgagor at the time of his becoming bankrupt may have in his possession and disposition, and be reputed owner of such ship or share thereof; and such mortgage shall be preferred to any right, claim, or interest in such ship or any share thereof which may belong to the assignees of such bankrupt.

Transfer of Mortgages.

73. A registered mortgage of any ship or share in a ship may be transferred to any person, and the instrument creating such transfer shall be in the form marked K in the schedule hereto, and on the production of such instrument the registrar shall enter in the register book the name of the transferee as mortgagee of the ship or shares therein mentioned, and shall by memorandum under his hand record on the instrument of transfer that the same has been recorded by him, stating the date and hour of such record.

Transmission of Interest of Mortgagees by Death, Bankruptcy, or Marriage.

74. If the interest of any mortgagee in any ship or in any share therein becomes transmitted in consequence of death, bankruptcy, or insolvency, or in consequence of the marriage of any female mortgagee, or by any lawful means other than by a transfer according to the provisions of this Act, such transmission shall be authenticated by a declaration of the person to whom such interest has been transmitted, made in the form marked L in the schedule hereto, and containing a statement describing the manner in which and the party to whom such property has been transmitted; and such declaration shall be made and subscribed, if the declarant resides at or within five miles of the custom house of the port of registry, in the presence of the registrar, but if beyond that distance in the presence of any registrar or of any justice of the peace, and shall be accompanied by such evidence as is hereinbefore required to authenticate a corresponding transmission of property from one registered owner to another.

Entry of transmitted Mortgage.

75. The registrar, upon the receipt of such declaration and the production of such evidence as aforesaid, shall enter the name of the person or persons entitled under such transmission in the register book as mortgagee or mortgagees of the ship or share in respect of which such transmission has taken place.

CERTIFICATES OF MORTGAGE AND SALE.

Powers of Mortgage and Sale may be conferred by Certificate.

76. Any registered owner, if desirous of disposing by way of mortgage or sale of the ship or share in respect of which he is registered at any place out of the country or possession in which the port of registry of such ship is situate, may apply to the registrar, who shall thereupon enable him to do so by granting such certificates as are

A.D. 1854. hereinafter mentioned, to be called respectively certificates of mortgage or certificates of sale, according as they purport to give a power to mortgage or a power to sell.

Requisites for Certificates of Mortgage and Sale.

77. Previously to any certificate of mortgage or sale being granted, the applicant shall state to the registrar, to be by him entered in the register book, the following particulars; (that is to say,)

- (1.) The names of the persons by whom the power mentioned in such certificate is to be exercised, and in the case of a mortgage the maximum amount of charge to be created, if it is intended to fix any such maximum, and in the case of a sale the minimum price at which a sale is to be made, if it is intended to fix any such minimum:
- (2.) The specific place or places where such power is to be exercised, or if no place be specified, then that it may be exercised anywhere, subject to the provisions hereinafter contained:
- (3.) The limit of time within which such power may be exercised.

Restrictions on Certificates of Mortgage and Sale.

78. No certificate of mortgage or sale shall be granted so as to authorize any mortgage or sale to be made—

At any place within the United Kingdom, if the port of registry of the ship be situate in the United Kingdom; or at any place within the same British possession, if the port of registry is situate within a British possession; or

By any person not named in the certificate.

Forms of Certificates of Mortgage and Sale.

79. Certificates of mortgage and sale shall be in the forms marked respectively M and N in the schedule hereto, and shall contain a statement of the several particulars hereinbefore directed to be entered in the register book, and in addition thereto an enumeration of any registered mortgages or certificates of mortgages or sale affecting the ships or shares in respect of which such certificates are given.

Rules as to Certificates of Mortgage.

80. The following rules shall be observed as to certificates of mortgage; (that is to say,)

- (1.) The power shall be exercised in conformity with the directions contained in the certificate:
- (2.) A record of every mortgage made thereunder shall be endorsed thereon by a registrar or British consular officer:
- (3.) No mortgage *bond fide* made thereunder shall be impeached by reason of the person by whom the power was given dying before the making of such mortgage:
- (4.) Whenever the certificate contains a specification of the place or places at which, and a limit of time not exceeding twelve months within which, the power is to be exercised, no mortgage *bond fide* made to a mortgagee without notice shall be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given:
- (5.) Every mortgage which is so registered as aforesaid on the certificate shall have priority over all mortgages of the same

ship or share created subsequently to the date of the entry of the certificate in the register book; and if there be more mortgages than one so endorsed, the respective mortgagees claiming thereunder shall, notwithstanding any express, implied, or constructive notice, be entitled one before the other according to the date at which a record of each instrument is endorsed on the certificate, and not according to the date of the instrument creating the mortgage:

- (6.) Subject to the foregoing rules, every mortgagee whose mortgage is registered on the certificate, shall have the same rights and powers and be subject to the same liabilities as he would have had and been subject to if his mortgage had been registered in the register book instead of on the certificate:
- (7.) The discharge of any mortgage so registered on the certificate may be endorsed thereon by any registrar or British consular officer, upon the production of such evidence as is hereby required to be produced to the registrar on the entry of the discharge of a mortgage in the register book; and upon such endorsement being made, the estate, if any, which passed to the mortgagee shall vest in the same person or persons in whom the same would, having regard to intervening acts and circumstances, if any, have vested if no such mortgage had been made:
- (8.) Upon the delivery of any certificate of mortgage to the registrar by whom it was granted he shall, after recording in the register book in such manner as to preserve its priority any unsatisfied mortgage registered thereon, cancel such certificate, and enter the fact of such cancellation in the register book; and every certificate so cancelled shall be void to all intents.

Rules as to Certificates of Sale.

81. The following rules shall be observed as to certificates of sale; (that is to say,)

- (1.) No such certificate shall be granted except for the sale of an entire ship:
- (2.) The power shall be exercised in conformity with the directions contained in the certificate:
- (3.) No sale *bond fide* made to a purchaser for valuable consideration shall be impeached by reason of the person by whom the power was given dying before the making of such sale:
- (4.) Whenever the certificate contains a specification of the place or places at which, and a limit of time not exceeding twelve months within which, the power is to be exercised, no sale *bond fide* made to a purchaser for valuable consideration without notice shall be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given:
- (5.) Any transfer made to a person qualified to be the owner of British ships shall be by bill of sale in the form hereinbefore mentioned, or as near thereto as circumstances permit:
- (6.) If the ship is sold to a party qualified to hold British ships, the ship shall be registered anew; but notice of all mortgages enumerated on the certificate of sale shall be entered in the register book:

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- (7.) Previously to such registry anew there shall be produced to the registrar required to make the same bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry of such ship :
- (8.) Such last-mentioned registrar shall retain the certificates of sale and registry, and after having indorsed on both of such instruments an entry of the fact of a sale having taken place, shall forward the said certificates to the registrar of the port appearing on such certificates to be the former port of registry of the ship, and such last-mentioned registrar shall thereupon make a memorandum of the sale in his register book, and the registry of the ship in such book shall be considered as closed, except as far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein :
- (9.) On such registry anew the description of the ship contained in her original certificate of registry may be transferred to the new register book, without her being re-surveyed, and the declaration to be made by the purchaser shall be the same as would be required to be made by an ordinary transferee :
- (10.) If the ship is sold to a party not qualified to be the owner of a British ship, the bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry shall be produced to some registrar or consular officer, who shall retain the certificates of sale and registry, and, having endorsed thereon the fact of such ship having been sold to persons not qualified to be owners of British ships, shall forward such certificates to the registrar of the port appearing on the certificate of registry to be the port of registry of such ship ; and such last-mentioned registrar shall thereupon make a memorandum of the sale in his register book, and the registry of the ship in such book shall be considered as closed, except so far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein :
- (11.) If upon a sale being made to an unqualified person default is made in the production of such certificates as are mentioned in the last rule, such unqualified person shall be considered by British law as having acquired no title to or interest in the ship ; and further, the party upon whose application such certificate was granted, and the persons exercising the power, shall each incur a penalty not exceeding one hundred pounds :
- (12.) If no sale is made in conformity with the certificate of sale, such certificate shall be delivered to the registrar by whom the same was granted ; and such registrar shall thereupon cancel it, and enter the fact of such cancellation in the register book ; and every certificate so cancelled shall be void to all intents.

Revocation of Certificates of Mortgage and Sale.

83. The registered owner for the time being of any ship or share therein in respect of which a certificate of mortgage or sale has been granted, specifying the place or places where the power thereby given is to be exercised, may, by an instrument under his hand made in the form O in the schedule hereto, or as near thereto as circumstances

permit, authorize the registrar by whom such certificate was granted A.D. 1854. to give notice to the registrar or consular officer, registrars or consular officers, at such place or places, that such certificate is revoked ; and notice shall be given accordingly ; and all registrars or consular officers receiving such notice shall record the same, and shall exhibit the same to all persons who may apply to them for the purpose of effecting or obtaining a mortgage or transfer under the said certificate of mortgage or sale ; and after such notice has been so recorded, the said certificate shall, so far as concerns any mortgage or sale to be thereafter made at such place, be deemed to be revoked and of no effect ; and every registrar or consular officer recording any such notice shall thereupon state to the registrar by whom the certificate was granted, whether any previous exercise of the power to which such certificate refers has taken place.

Transfer of Registry not to affect Rights of Owners.

91. The transfer of the registry of any ship in manner aforesaid shall not in any way affect the rights of the several persons interested, either as owners or mortgagees in such ship, but such rights shall in all respects be maintained and continue in the same manner as if no such transfer had been effected. See sec. 12 of the 18 & 19 Vict. c. 91.

NATIONAL CHARACTER.

National Character of Ship to be declared before Clearance.

102. No officer of customs shall grant a clearance or transire for any ship until the master of such ship has declared to such officer the name of the nation to which he claims that she belongs, and such officer shall thereupon inscribe such name on the clearance or transire ; and if any ship attempts to proceed to sea without such clearance or transire, any such officer may detain her until such declaration is made.

Penalties.

103. The offences hereinafter mentioned shall be punishable as follows :—

For unduly assuming a British Character.

- (1.) If any person uses the British flag and assumes the British national character on board any ship owned in whole or in part by any persons not entitled by law to own British ships, for the purpose of making such ship appear to be a British ship, such ship shall be forfeited to her Majesty, unless such assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in exercise of some belligerent right : and in any proceeding for enforcing any such forfeiture, the burden of proving a title to use the British flag and assume the British national character shall lie upon the person using and assuming the same.

For Concealment of British or Assumption of Foreign Character.

- (2.) If the master or owner of any British ship does or permits to be done any matter or thing, or carries or permits to be carried any papers or documents, with intent to conceal the British character of such ship from any person entitled by British law to inquire into the same, or to assume a foreign

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character, or with intent to deceive any such person as lastly hereinbefore mentioned, such ship shall be forfeited to her Majesty; and the master if he commits or is privy to the commission of the offence, shall be guilty of a misdemeanour.

For acquiring Ownership if unqualified.

- (3.) If any unqualified person, except in the case of such transmitted interests as are hereinbefore mentioned, acquires as owner any interest, either legal or beneficial, in a ship using a British flag and assuming the British character, such interest shall be forfeited to her Majesty.

For false declaration of Ownership.

- (4.) If any person, on behalf of himself or any other person or body of persons, wilfully makes a false declaration touching the qualification of himself or such other person or body of persons to own British ships or any shares therein, the declarant shall be guilty of a misdemeanour; and the ship or share in respect of which such declaration is made, if the same has not been forfeited under the foregoing provision, shall, to the extent of the interest therein of the person making the declaration, and, unless it is shown that he had no authority to make the same, of the parties on behalf of whom such declaration is made, be forfeited to her Majesty.

And in order that the above provisions as to forfeitures may be carried into effect it shall be lawful for any commissioned officer on full pay in the military or naval service of her Majesty, or any British officer of customs, or any British consular officer, to seize and detain any ship which has, either wholly or as to any share therein, become subject to forfeiture as aforesaid, and to bring her for adjudication before the High Court of Admiralty in England or Ireland, or any Court having Admiralty jurisdiction in her Majesty's dominions; and such Court may thereupon make such order in the case as it may think fit, and may award to the officer bringing in the same for adjudication such portions of the proceeds of the sale of any forfeited ship or share as it may think right. See sec. 9 of 18 & 19 Vict. c. 91.

Officer not liable for any Seizure made on reasonable Grounds.

104. No such officer as aforesaid shall be responsible, either civilly or criminally, to any person whomsoever, in respect of the seizure or detention of any ship that has been seized or detained by him in pursuance of the provisions herein contained, notwithstanding that such ship is not brought in for adjudication, or, if so brought in, is declared not to be liable to forfeiture, if it is shown to the satisfaction of the Judge or Court before whom any trial relating to such ship or such seizure or detention is held that there were reasonable grounds for such seizure or detention; but if no such grounds are shown, such Judge or Court may award payment of costs and damages to any party aggrieved, and make such other order in the premises as it thinks just.

Penalty for carrying improper Colours.

105. If any colours usually worn by her Majesty's ships, or any

colours resembling those of her Majesty, or any distinctive national colours, except the red ensign usually worn by merchant ships, or except the union jack with a white border, or if the pendant usually carried by her Majesty's ships or any pendant in anywise resembling such pendant, are or is hoisted on board any ship or boat belonging to any subject of her Majesty without warrant for so doing from her Majesty or from the Admiralty, the master of such ship or boat, or the owner thereof, if on board the same, and every other person hoisting or joining or assisting in hoisting the same, shall for every such offence incur a penalty not exceeding five hundred pounds; and it shall be lawful for any officer on full pay in the military or naval service of her Majesty, or any British officer of the customs, or any British consular officer, to board any such ship or boat, and to take away any such jack, colours, or pendant; and such jack, colours, or pendant, shall be forfeited to her Majesty.

Effect of Declaration in the Act that a Ship shall not be recognised as a British Ship.

106. Whenever it is declared by this Act that a ship belonging to any person or body corporate qualified according to this Act to be owners of British ships shall not be recognised as a British ship, such ship shall not be entitled to any benefits, privileges, advantages, or protection usually enjoyed by British ships, and shall not be entitled to use the British flag or assume the British national character; but, so far as regards the payment of dues, the liability to pains and penalties, and the punishment of offences committed on board such ship or by any person belonging to her, such ship shall be dealt with in the same manner in all respects as if she were a recognised British ship.

EVIDENCE.

Copies of Register, and Declarations to be admissible in Evidence, and to be primâ facie Proof of certain Things.

107. Every register of or declaration made in pursuance of the second part of this Act in respect of any British ship may be proved in any court of justice, or before any person having by law or by consent of parties authority to receive evidence, either by the production of the original or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the registrar or other person having the charge of the original; which certified copies he is hereby required to furnish to any person applying at a reasonable time for the same, upon payment of one shilling for each such certified copy; and every such register and copy of a register, and also every certificate of registry of any British ship, purporting to be signed by the registrar or other proper officer, shall be received in evidence in any court of justice or before any person having by law or by consent of parties authority to receive evidence as *primâ facie* proof of all the matters contained or recited in such register when the register of such copy is produced, and of all the matters contained in or endorsed on such certificate of registry, and purporting to be authenticated by the signature of a registrar, when such certificate is produced. See sec. 15 of 18 & 19 Vict. c. 91.

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PART III.

MASTERS AND SEAMEN.

Agreements to be made with Seamen, containing certain Particulars.

149. The master of every ship, except ships of less than eighty tons registered tonnage exclusively employed in trading between different ports on the coasts of the United Kingdom, shall enter into an agreement with every seaman whom he carries to sea from any port in the United Kingdom as one of his crew in the manner hereinafter mentioned; and every such agreement shall be in a form sanctioned by the Board of Trade, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars as terms thereof; (that is to say,)

- (1.) The nature, and, as far as practicable, the duration of the intended voyage or engagement:
- (2.) The number and description of the crew, specifying how many are engaged as sailors:
- (3.) The time at which each seaman is to be on board or to begin work:
- (4.) The capacity in which each seaman is to serve:
- (5.) The amount of wages which each seaman is to receive:
- (6.) A scale of the provisions which are to be furnished to each seaman:
- (7.) Any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which have been sanctioned by the Board of Trade as regulations proper to be adopted, and which the parties agree to adopt.

Proviso as to Forms for Colonial Ships.

And every such agreement shall be so framed as to admit of stipulations, to be adopted at the will of the master and seamen in each case, as to advance and allotment of wages, and may contain any other stipulations, which are not contrary to law; provided that if the master of any ship belonging to any British possession has an agreement with his crew made in due form according to the law of the possession to which such ship belongs or in which her crew were engaged, and engages single seamen in the United Kingdom, such seamen may sign the agreement so made, and it shall not be necessary for them to sign an agreement in the form sanctioned by the Board of Trade.

For Foreign-going Ships, such Agreements, when made in the United Kingdom, except in special Cases, to be made before and attested by a Shipping Master.

150. In the case of all foreign-going ships, in whatever part of her Majesty's dominions the same are registered, the following rules shall be observed with respect to agreements; (that is to say,)

- (1.) Every agreement made in the United Kingdom (except in such cases of agreements with substitutes as are hereinafter specially provided for) shall be signed by each seaman in the presence of a shipping master:
- (2.) Such shipping master shall cause the agreement to be read

over and explained to each seaman, or otherwise ascertain A.D. 1854.
that each seaman understands the same before he signs it,
and shall attest each signature :

To be in Duplicate.

- (3.) When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by the shipping master, and the other part shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship, and shall be delivered to the master :

Provision for Substitutes.

- (4.) In the case of substitutes engaged in the place of seamen who have duly signed the agreement, and whose services are lost within twenty-four hours of the ship's putting to sea by death, desertion, or other unforeseen cause, the engagement shall, when practicable, be made before some shipping master duly appointed in the manner hereinbefore specified ; and whenever such last-mentioned engagement cannot be so made, the master shall, before the ship puts to sea, if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to the seamen ; and the seamen shall thereupon sign the same in the presence of a witness, who shall attest their signatures.

Foreign-going Ships making short Voyages may have running Agreements.

151. In the case of foreign-going ships making voyages averaging less than six months in duration, running agreements with the crew may be made to extend over two or more voyages, so that no such agreement shall extend beyond the next following thirtieth day of June or thirty-first day of December or the first arrival of the ship at her port of destination in the United Kingdom after such date, or the discharge of cargo consequent upon such arrival ; and every person entering into such agreement, whether engaged upon the first commencement thereof or otherwise, shall enter into and sign the same in the manner hereby required for other foreign-going ships ; and every person engaged thereunder, if discharged in the United Kingdom, shall be discharged in the manner hereby required for the discharge of seamen belonging to other foreign-going ships.

Engagement and discharge of Seamen in the meantime.

152. The master of every foreign-going ship for which such a running agreement as aforesaid is made shall, upon every return to any port in the United Kingdom before the final termination of the agreement, discharge or engage before the shipping master at such port any seamen whom he is required by law so to discharge or engage, and shall upon every such return endorse on the agreement a statement (as the case may be) either that no such discharges or engagements have been made or are intended to be made before the ship again leaves port, or that all such discharges or engagements have been duly made as hereinbefore required, and shall deliver the agreement so endorsed to the shipping master ; and any master who wilfully makes a false statement in such endorsement shall incur a

A.D. 1854. penalty not exceeding twenty pounds; and the shipping master shall also sign an endorsement on the agreement to the effect that the provisions of this Act relating to such agreement have been complied with, and shall re-deliver the agreement so endorsed to the master.

Duplicates of running Agreements, how to be dealt with.

153. In cases in which such running agreements are made, the duplicate agreement retained by the shipping master upon the first engagement of the crew shall either be transmitted to the registrar general of seamen immediately, or be kept by the shipping master until the expiration of the agreement, as the Board of Trade directs.

Fees to be paid on such running agreements.

154. For the purpose of determining the fees to be paid upon the engagement and discharge of seamen belonging to foreign-going ships which have running agreements as aforesaid, the crew shall be considered to be engaged when the agreement is first signed, and to be discharged when the agreement finally terminates, and all intermediate engagements and discharges shall be considered to be engagements and discharges of single seamen.

In Home-Trade Ships Agreement to be entered into before a Shipping Master or other Witness.

155. In the case of home-trade ships, crews or single seamen may if the master thinks fit, be engaged before a shipping master in the manner hereinbefore directed with respect to foreign-going ships; and in every case in which the engagement is not so made, the master shall, before the ship puts to sea, if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to each seaman, and the seaman shall thereupon sign the same in the presence of a witness, who shall attest his signature.

Special Agreements for Home-Trade Ships belonging to same Owners.

156. In cases where several home-trade ships belong to the same owner, the agreement with the seamen may, notwithstanding anything herein contained, be made by the owner instead of by the master, and the seamen may be engaged to serve in any two or more of such ships, provided that the names of the ships and the nature of the service are specified in the agreement; but with the foregoing exception all provisions herein contained which relate to ordinary agreements for home-trade ships shall be applicable to agreements made in pursuance of this section.

Alterations to be void unless attested to have been made with the Consent of all Parties.

163. Every erasure, interlineation, or alteration in any such agreement with seamen as is required by the third part of this Act (except additions so made as hereinbefore directed for shipping substitutes or persons engaged subsequently to the first departure of the ship) shall be wholly inoperative, unless proved to have been made with the consent of all the persons interested in such erasure, interlineation, or alteration by the written attestation (if made in her Majesty's dominions) of some shipping master, justice, officer of customs, or other public functionary, or (if made out of her Majesty's dominions) of a British consular officer, or, where there is no such officer, of two respectable British merchants.

Seamen not to be bound to produce Agreement.

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165. Any seamen may bring forth evidence to prove the contents of any agreement or otherwise to support his case, without producing or giving notice to produce the agreement or any copy thereof.

Seamen discharged before Voyage to have Compensation.

167. Any seaman who has signed an agreement, and is afterwards discharged before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying such discharge and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, due compensation for the damage thereby caused to him, not exceeding one month's wages, and may, on adducing such evidence as the Court hearing the case deems satisfactory of his having been so improperly discharged as aforesaid, recover such compensation as if it were wages duly earned.

ALLOTMENT OF WAGES.

Regulations as to Allotment Notes.

168. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement, and shall state the amounts and times of the payments to be made; and all allotment notes shall be in forms sanctioned by the Board of Trade.

Allotment Notes may be sued on summarily by certain Persons and under certain Conditions.

169. The wife, or the father or mother, or the grandfather or grandmother, or any child or grandchild, or any brother or sister of any seaman in whose favour an allotment note of part of the wages of such seaman is made, may, unless the seaman is shown in manner hereinafter mentioned to have forfeited or ceased to be entitled to the wages out of which the allotment is to be paid, and subject, as to the wife, to the provision hereinafter contained, sue for and recover the sums allotted by the note when and as the same are made payable, with costs, from the owner or any agent who has authorized the drawing of the note, either in the County Court or in the summary manner in which seamen are by this Act enabled to sue for and recover wages not exceeding fifty pounds; and in any such proceeding it shall be sufficient for the claimant to prove that he or she is the person mentioned in the note, and that the note was given by the owner or by the master or some other authorized agent; and the seaman shall be presumed to be duly earning his wages, unless the contrary is shown to the satisfaction of the Court, either by the official statement of the change in the crew caused by his absence made and signed by the master, as by this Act is required, or by a duly certified copy of some entry in the official log-book to the effect that he has left the ship, or by a credible letter from the master of the ship to the same effect, or by such other evidence, of whatever description, as the Court in its absolute discretion considers sufficient to show satisfactorily that the seaman has ceased to be entitled to the wages out of which the allotment is to be paid: provided that the wife of any seaman who deserts her children, or so misconducts herself as to be undeserving of support from her husband, shall thereupon

A.D. 1854. forfeit all right to further payments of any allotment of his wages which has been made in her favour.

DISCHARGE AND PAYMENT OF WAGES.

Discharge from Foreign-going Ships to be made before Shipping Master.

170. In the case of all British foreign-going ships, in whatever part of her Majesty's dominions the same are registered, all seamen discharged in the United Kingdom shall be discharged and receive their wages in the presence of a shipping master duly appointed under this Act, except in cases where some competent Court otherwise directs: and any master or owner of any such ship who discharges any seaman belonging thereto, or, except as aforesaid, pays his wages within the United Kingdom in any other manner, shall incur a penalty not exceeding ten pounds; and in the case of home-trade ships seaman may, if the owner or master so desires, be discharged and receive their wages in like manner.

Master to deliver Account of Wages.

171. Every master shall, not less than twenty-four hours before paying off or discharging any seaman, deliver to him, or, if he is to be discharged before a shipping master, to such shipping master, a full and true account in a form sanctioned by the Board of Trade of his wages and of all deductions to be made therefrom on any account whatever, and in default shall for each offence incur a penalty not exceeding five pounds; and no deduction from the wages of any seaman (except in respect of any matter happening after such delivery) shall be allowed unless it is included in the account so delivered; and the master shall during the voyage enter the various matters in respect of which such deductions are made, with the amounts of the respective deductions, as they occur, in a book to be kept for that purpose, and shall, if required, produce such book at the time of the payment of wages, and also upon the hearing before any competent authority of any complaint or question relating to such payments.

Shipping Master may decide Questions which Parties refer to him.

173. Every shipping master shall hear and decide any question whatever between a master or owner and any of his crew which both parties agree in writing to submit to him; and every award so made by him shall be binding on both parties, and shall in any legal proceeding which may be taken in the matter before any court of justice be deemed to be conclusive as to the rights of the parties; and no such submission or award shall require a stamp; and any document purporting to be such submission or award shall be *prima facie* evidence thereof.

Settlement of Wages.

175. The following rules shall be observed with respect to the settlement of wages; (that is to say,)

Release to be signed before and attested by the Shipping Master.

- (1.) Upon the completion before a shipping master of any discharge and settlement, the master or owner and each seaman shall respectively in the presence of the shipping master sign in a form sanctioned by the Board of Trade a mutual release

of all claims in respect of the past voyage or engagement, and the shipping master shall also sign and attest it, and shall retain and transmit it as herein directed: A.D. 1864.

To be Discharge.

- (3.) Such release so signed and attested shall operate as a mutual discharge and settlement of all demands between the parties thereto in respect of the past voyage or engagement:

And to be Evidence.

- (3.) A copy of such release certified under the hand of such shipping master to be a true copy shall be given by him to any party thereto requiring the same; and such copy shall be receivable in evidence upon any future question touching such claims as aforesaid, and shall have all the effect of the original of which it purports to be a copy:

No other Receipt to be a Discharge.

- (4.) In cases in which discharge and settlement before a shipping master are hereby required, no payment, receipt, settlement, or discharge otherwise made shall operate or be admitted as evidence of the release or satisfaction of any claim.

Voucher to be given to Master, and to be Evidence.

- (5.) Upon any payment being made by a master before a shipping master, the shipping master shall, if required, sign and give to such master a statement of the whole amount so paid; and such statement shall as between the master and his employer be received as evidence that he has made the payments therein mentioned.

LEGAL RIGHTS TO WAGES.

Right to Wages and Provisions, when to begin.

181. A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

Seamen not to give up certain rights.

182. No seaman shall by any agreement forfeit his lien upon the ship, or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled; and every stipulation in any agreement inconsistent with any provision of this Act, and every stipulation by which any seaman consents to abandon his right to wages in the case of the loss of the ship, or to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative. See sec. 18 of 25 & 26 Vict. c. 63.

Wages not to be dependent on the earning of Freight.

183. No right to wages shall be dependent on the earning of freight; and every seaman and apprentice who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same, not-

A.D. 1854. withstanding that freight has not been earned ; but in all cases of wreck or loss of the ship, proof that he has not exerted himself to the utmost to save the ship, cargo, and stores shall bar his claim.

In case of Death, such Wages to be paid as after-mentioned.

184. If any seaman or apprentice to whom wages are due under the last preceding enactment dies before the same are paid, they shall be paid and applied in the manner hereinafter specified with regard to the wages of seamen who die during a voyage.

Rights to Wages in case of Termination of Service by Wreck or Illness.

185. In cases where the service of any seaman terminates before the period contemplated in the agreement by reason of the wreck or loss of the ship, and also in cases where such service terminates before such period as aforesaid by reason of his being left on shore at any place abroad under a certificate of his unfitness or inability to proceed on the voyage granted as hereinafter mentioned, such seaman shall be entitled to wages for the time of service prior to such termination as aforesaid, but not for any further period.

Wages not to accrue during Refusal to work or Imprisonment.

186. No seaman or apprentice shall be entitled to wages for any period during which he unlawfully refuses or neglects to work when required, whether before or after the time fixed by the agreement for his beginning work, nor, unless the Court hearing the case otherwise directs, for any period during which he is lawfully imprisoned for any offence committed by him.

Period within which Wages are to be paid.

187. The master or owner of every ship shall pay to every seaman his wages within the respective periods following ; (that is to say,) in the case of a home-trade ship within two days after the termination of the agreement or at the time when such seamen is discharged, whichever first happens ; and in the case of all other ships (except ships employed in the southern whale fishery or on other voyages for which seamen by the terms of their agreement are wholly compensated by shares in the profits of the adventure) within three days after the cargo has been delivered, or within five days after the seaman's discharge, whichever first happens ; and in all cases the seaman shall at the time of his discharge be entitled to be paid on account a sum equal to one-fourth part of the balance due to him ; and every master or owner who neglects or refuses to make payment in manner aforesaid, without sufficient cause, shall pay to the seaman a sum not exceeding the amount of two days' pay for each of the days, not exceeding ten days, during which payment is delayed beyond the respective periods aforesaid, and such sum shall be recoverable as wages.

MODE OF RECOVERING WAGES.

Seamen may sue for Wages in a Summary manner.

188. Any seaman or apprentice, or any person duly authorized on his behalf, may sue in a summary manner before any two justices of the peace acting in or near to the place at which the service has terminated, or at which the seaman or apprentice has been discharged, or at which any person upon whom the claim is made is or resides, or in Scotland either before any such justices or before the sheriff of the

county within which any such place is situated, for any amount A.D. 1854. of wages due to such seamen or apprentice not exceeding fifty pounds over and above the costs of any proceeding for the recovery thereof, so soon as the same becomes payable; and every order made by such justices or sheriff in the matter shall be final.¹

Restrictions on Suits for Wages in Superior Courts.

189. No suit or proceeding for the recovery of wages under the sum of fifty pounds shall be instituted by or on behalf of any seaman or apprentice in any Court of Admiralty or Vice-Admiralty, or in the Court of Session in Scotland, or in any Superior Court of Record in her Majesty's dominions, unless the owner of the ship is adjudged bankrupt or declared insolvent, or unless the ship is under arrest or is sold by the authority of any such Court as aforesaid, or unless any Justices acting under the authority of this Act refer the case to be adjudged by such Court, or unless neither the owner nor master is or resides within twenty miles of the place where the seaman or apprentice is discharged or put ashore.

No Seaman to sue for Wages abroad, except in Cases of Discharge or of Danger to Life.

190. No seaman who is engaged for a voyage or engagement which is to terminate in the United Kingdom shall be entitled to sue in any Court abroad for wages, unless he is discharged with such sanction as herein required, and with the written consent of the master, or proves such ill-usage on the part of the master or by his authority as to warrant reasonable apprehension of danger to the life of such seaman if he were to remain on board; but if any seaman on his return to the United Kingdom proves that the master or owner has been guilty of any conduct or default which but for this enactment would have entitled the seaman to sue for wages before the termination of the voyage or engagement, he shall be entitled to recover in addition to his wages such compensation not exceeding twenty pounds as the Court hearing the case thinks reasonable.

Master to have same Remedies for Wages as Seamen.

191. Every master of a ship shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of his wages which by this Act or by any law or custom any seaman, not being a master, has for the recovery of his wages; and if in any proceeding in any Court of Admiralty or Vice-Admiralty touching the claim of a master to wages any right of set-off or counter-claim is set up, it shall be lawful for such Court to enter into and adjudicate upon all questions and to settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and to direct payment of any balance which is found to be due.

WAGES AND EFFECTS OF DECEASED SEAMEN.

Masters to take charge of or sell Effects of deceased Seamen which are on board, and enter the same and Wages due in the official Log.

194. Whenever any seaman or apprentice belonging to or sent home in any British ship, whether a foreign-going ship or a home-trade ship, employed on a voyage which is to terminate in the United Kingdom, dies during such voyage, the master shall take charge of all

¹ Sec. 254, as to certificates.

A.D. 1854. money, clothes, and effects which he leaves on board, and shall, if he thinks fit, cause all or any of the said clothes and effects to be sold by auction at the mast or other public auction, and shall thereupon sign an entry in the official log-book containing the following particulars; (that is to say,)

- (1.) A statement of the amount of the money and a description of the effects so left by the deceased:
- (2.) In case of a sale, a description of each article sold, and the sum received for each :
- (3.) A statement of the sum due to the deceased as wages, and the total amount of the deductions (if any) to be made therefrom :

And shall cause such entry to be attested by a mate and by one of the crew. See sec. 21 of 25 & 26 Vict. c. 63.

Such Effects and Wages to be paid either to Consul or to Shipping Master, with full Accounts.

195. In the cases provided for by the last preceding section, the following rules shall be observed ; (that is to say,)

- (1.) If the ship proceeds at once to any port in the United Kingdom without touching on the way at any foreign port, the master shall within forty-eight hours after his arrival deliver any such effects as aforesaid remaining unsold, and pay any money which he has taken charge of or received from such sale as aforesaid, and also the balance of wages due to the deceased, to the shipping master at the port of destination in the United Kingdom :
- (2.) If the ship touches and remains for forty-eight hours at some foreign port or at some port in her Majesty's dominions abroad before coming to any port in the United Kingdom, the master shall report the case to the British consular officer or officer of customs there, as the case may be, and shall give to such officer any information he requires as to the destination of the ship and probable length of the voyage ; and such officer may thereupon, if he considers it expedient so to do, require the said effects, money, and wages to be delivered and paid to him, and shall upon such delivery and payment give to the master a receipt, and the master shall within forty-eight hours after his arrival at his port of destination in the United Kingdom produce the same to the shipping master there ; and such consular officer or officer of customs shall in such case endorse and certify upon the agreement with the crew such particulars with respect to such delivery and payment as the Board of Trade requires :
- (3.) If such officer as aforesaid does not require such payment and delivery to be made to him, the master shall take charge of the said effects, money, and wages, and shall within forty-eight hours after his arrival at his port of destination in the United Kingdom deliver and pay the same to the shipping master there :
- (4.) The master shall in all cases in which any seaman or apprentice dies during the progress of a voyage or engagement give to the Board of Trade, or to such officer or shipping master as aforesaid, an account in such form as they respectively require of the effects, money, and wages so to be delivered

and paid; and no deductions claimed in such account shall be allowed unless verified, if there is any official log-book, by such entry therein as hereinbefore required, and also by such other vouchers (if any) as may be reasonably required by the Board of Trade, or by the officer or shipping master to whom the account is rendered: A.D. 1854.

- (5.) Upon due compliance with such of the provisions of this section as relate to acts to be done at the port of destination in the United Kingdom, the shipping master shall grant to the master a certificate to that effect, and no officer of customs shall clear inwards any foreign-going ship without the production of such certificate.

Penalties for not taking charge of, remitting, or accounting for such Moneys and Effects.

198. If any master fails to take charge of the money or other effects of a seaman or apprentice dying during a voyage, or to make such entries in respect thereof, or to procure such attestation to such entries, or to make such payment or delivery of any money, wages, or effects of any seaman or apprentice dying during a voyage, or to give such account in respect thereof as hereinbefore respectively directed, he shall be accountable for the money, wages, and effects of the seaman or apprentice to the Board of Trade, and shall pay and deliver the same accordingly; and such master shall in addition for every such offence incur a penalty not exceeding treble the value of the money or effects not accounted for, or, if such value is not ascertained, not exceeding fifty pounds; and if any such money, wages, or effects are not duly paid, delivered, or accounted for by the master, the owner of the ship shall pay, deliver, and account for the same, and such money and wages and the value of such effects shall be recoverable from him accordingly; and if he fails to account for and pay the same, he shall, in addition to his liability for the said money and value, incur the same penalty which is hereinbefore mentioned as incurred by the master for the like offence; and all money, wages, and effects of any seaman or apprentice dying during a voyage shall be recoverable in the same courts and by the same modes of proceeding by which seamen are hereby enabled to recover wages due to them.

Wages and Effects of Seamen dying at home to be paid in certain Cases to Board of Trade.

198. Whenever any seaman or apprentice dies in the United Kingdom, and is at the time of his death entitled to claim from the master or owner of any ship in which he has served any unpaid wages or effects, such master or owner shall pay and deliver or account for the same to the shipping master at the port where the seaman or apprentice was discharged or was to have been discharged or to the Board of Trade, or as it directs.

If less than Fifty Pounds, Wages and Property of deceased Seamen may be paid over without Probate or Administration to the Persons entitled.

199. If the money and effects of any deceased seaman or apprentice paid, delivered, or remitted to the Board of Trade or its agents, including the moneys received for any part of the said effects which have been sold either before delivery to the Board of Trade or by its direction, do not exceed in value the sum of fifty pounds, then,

A.D. 1854. subject to the provisions hereinafter contained, and to all such deductions for expenses incurred in respect of the seaman or apprentice or of his said money and effects as the said board thinks proper to allow, the said board may, if it thinks fit so to do, pay and deliver the said money and effects either to any claimants who can prove themselves to the satisfaction of the said board either to be his widow or children, or to be entitled to the effects of the deceased under his will (if any), or under the statutes for the distribution of the effects of intestates, or under any other statute, or at common law, or to be entitled to procure probate or take out letters of administration or confirmation, although no probate or letters of administration or confirmation have been taken out, and shall be thereby discharged from all further liability in respect of the money and effects so paid and delivered, or may, if it thinks fit so to do, require probate or letters of administration or confirmation to be taken out, and thereupon pay and deliver the said money and effects to the legal personal representatives of the deceased; and all claimants to whom such money or effects are so paid or delivered shall apply the same in due course of administration; and if such money and effects exceed in value the sum of fifty pounds, then, subject to the provisions hereinafter contained and to deduction for expenses, the Board of Trade shall pay and deliver the same to the legal personal representatives of the deceased.

LEAVING SEAMEN ABROAD.

On discharge of Seamen abroad, by Sale of Ship or otherwise, Certificates of Discharge to be given, and Seamen to be sent home at Expense of Owner.

205. Whenever any British ship is transferred or disposed of at any place out of her Majesty's dominions, and any seaman or apprentice belonging thereto does not in the presence of some British consular officer, or, if there is no such consular officer there, in the presence of one or more respectable British merchants residing at the place, and not interested in the said ship, signify his consent in writing to complete the voyage if continued, and whenever the service of any seaman or apprentice belonging to any British ship terminates at any place out of her Majesty's dominions, the master shall give to each such seaman or apprentice a certificate of discharge in the form sanctioned by the Board of Trade as aforesaid, and in the case of any certificated mate whose certificate he has retained shall return such certificate to him, and shall also, besides paying the wages to which such seaman or apprentice is entitled, either provide him with adequate employment on board some other British ship bound to the port in her Majesty's dominions at which he was originally shipped, or to such other port in the United Kingdom as is agreed upon by him, or furnish the means of sending him back to such port, or provide him with a passage home, or deposit with such consular officer or such merchant or merchants as aforesaid such a sum of money as is by such officer or merchants deemed sufficient to defray the expenses of his subsistence and passage home; and such consular officer or merchants shall endorse upon the agreement of the ship which the seaman or apprentice is leaving the particulars of such payment, provision, or deposit; and if the master refuses or neglects to comply with the requirements of this section, such expenses as last aforesaid, if defrayed by such consular officer or by any

other person, shall, unless such seaman or apprentice has been guilty of barratry, be a charge upon the ship to which such seaman or apprentice belonged and upon the owner for the time being thereof, and may be recovered against such owners, with costs, at the suit of the consular officer or other person defraying such expenses, or, in case the same has been allowed to the consular officer out of the public moneys, as a debt due to her Majesty either by ordinary process of law, or in the manner in which seamen are hereby enabled to recover wages; and such expenses, if defrayed by the seaman or apprentice, shall be recoverable as wages due to him.

No Seamen to be discharged or left abroad without Certificate of some Functionary.

207. If the master of any British ship does any of the following things; (that is to say,)

- (1.) Discharges any seaman or apprentice in any place situate in any British possession abroad (except the possession in which he was shipped), without previously obtaining the sanction in writing endorsed on the agreement of some public shipping master or other officer duly appointed by the local government in that behalf, or (in the absence of any such functionary) of the chief officer of customs resident at or near the place where the discharge takes place:
- (2.) Discharges any seaman or apprentice at any place out of her Majesty's dominions without previously obtaining the sanction so endorsed as aforesaid of the British consular officer there, or (in his absence) of two respectable merchants resident there:
- (3.) Leaves any seaman or apprentice at any place situate in any British possession abroad on any ground whatever, without previously obtaining a certificate in writing so endorsed as aforesaid from such officer or person as aforesaid, stating the fact and the cause thereof, whether such cause be unfitness or inability to proceed to sea, or desertion or disappearance:
- (4.) Leaves behind any seaman or apprentice at any place out of her Majesty's dominions, on shore or at sea, on any ground whatever, without previously obtaining the certificate endorsed in manner and to the effect last aforesaid of the British consular officer there or (in his absence) of two respectable merchants, if there is any such at or near the place where the ship then is:

He shall for each such default be deemed guilty of a misdemeanour; and the said functionaries shall and the said merchants may examine into the grounds of such proposed discharge, or into the allegation of such unfitness, inability, desertion or disappearance as aforesaid, in a summary way, and may for that purpose, if they think fit so to do, administer oaths, and may either grant or refuse such sanction or certificate as appears to them to be just.

Proof of such Certificate to be upon the Master.

208. Upon the trial of any information, indictment, or other proceeding against any person for discharging or leaving behind any seaman or apprentice, contrary to the provisions of this Act, it shall lie upon such person either to produce the sanction or certificate hereby required, or to prove that he had obtained the same previously to having discharged or left behind such seaman or ap-

A.D. 1854. prentice, or that it was impracticable for him to obtain such sanction or certificate.

Wages to be paid when Seamen are left behind on Ground of Inability.

209. Every master of any British ship who leaves any seaman or apprentice on shore at any place abroad in or out of her Majesty's dominions, under a certificate of his unfitness or inability to proceed on the voyage, shall deliver to one of the functionaries aforesaid or (in the absence of such functionaries) to the merchants by whom such certificate is signed, or, if there be but one respectable merchant resident at such place, to him, a full and true account of the wages due to such seaman or apprentice, such account when delivered to a consular officer to be in duplicate, and shall pay the same either in money or by a bill drawn upon the owner; and in the case of every bill so drawn, such functionary, merchants or merchant as aforesaid, shall by endorsement certify thereon that the same is drawn for money due on account of a seaman's wages, and shall also endorse the amount for which such bill is drawn, with such further particulars in respect of the case as the Board of Trade requires, upon the agreement of the ship; and every such master as aforesaid who refuses or neglects to deliver a full account of such wages, and pay the amount thereof in money or by bill, as hereinbefore required, shall for every such defence or default be liable, in addition to the payment of the wages, to a penalty not exceeding ten pounds; and every such master who delivers a false account of such wages shall, for every such offence, in addition to the payment of the wages, incur a penalty not exceeding twenty pounds. See sec. 19 of 25 & 26 Vict. c. 63.

Such Wages to be treated as Money due to the Seamen, subject to payment of Expense of their Subsistence and Passage home.

210. Every such payment as last aforesaid, whether by bill or in money, shall, if made in any British possession, be made to the seaman or apprentice himself, and, if made out of her Majesty's dominions, to the consular officer, who shall, if satisfied with the account, endorse on one of the duplicates thereof a receipt for the amount paid or bill delivered, and shall return the same to the master; and the master shall, within forty-eight hours after his return to his port of destination in the United Kingdom, deliver the same to the shipping master there; and the consular officer shall retain the other duplicate of the said account, and shall, if the seaman or apprentice subsequently obtains employment at or otherwise quits the port, deduct out of the sum received by him as aforesaid any expenses which have been incurred by him in respect of the subsistence of the seaman or apprentice under the provisions herein contained, except such as the master or owner of the ship is hereby required to pay, and shall pay the remainder to the seaman or apprentice, and shall also deliver to him an account of the sums so received and expended on his behalf; and shall, if the seaman or apprentice dies before his ship quits the port, deal with the same in the manner hereinafter specified in that behalf, and shall, if the seaman or apprentice is sent home at the public expense under the provisions herein contained, account for the amount received to the Board of Trade; and such amount shall, after deducting any expenses which have been duly incurred in respect of such seaman or

apprentice, except such as the master or owner of the ship is hereby **A.D. 1854.** required to pay, be dealt with as wages to which he is entitled, and shall be paid accordingly.

Power to sue for the Amount advanced for the Relief of Seamen left abroad.

213. If any seaman or apprentice belonging to any British ship is discharged or left behind at any place out of the United Kingdom, without full compliance on the part of the master with all the provisions in that behalf in this Act contained, and becomes distressed and is relieved under the provisions of this Act, or if any subject of her Majesty, after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to any foreign power, or to the subject of any foreign power, becomes distressed and is relieved as aforesaid, the wages (if any) due to such seaman or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and burial, in case he should die abroad before reaching home, shall be a charge upon the ship, whether British or foreign, to which he so belonged as aforesaid; and the Board of Trade may in the name of her Majesty (besides suing for any penalties which may have been incurred) sue for and recover the said wages and expenses, with costs, either from the master of such ship as aforesaid, or from the person who is owner thereof for the time being, or, in the case of such engagement as aforesaid for service in a foreign ship, from such master or owner, or from the person by whom such engagement was so made as aforesaid; and such sums shall be recoverable either in the same manner as other debts due to her Majesty, or in the same manner and by the same form and process in which wages due to the seaman would be recoverable by him; and in any proceedings for that purpose production of the account (if any) to be furnished as hereinbefore is provided in such cases, together with proof of payment by the Board of Trade or by the Paymaster General of the charges incurred on account of any such seaman, apprentice, or other person, shall be sufficient evidence that he was relieved, conveyed home, or buried (as the case may be) at her Majesty's expense. See sec. 16 of the 18 & 19 Vict. c. 91, and sec. 22 of the 25 & 26 Vict. c. 63.

PROVISIONS, HEALTH, AND ACCOMMODATION.

Forfeiture for frivolous Complaint.

222. If the officer to whom any such complaint as last aforesaid (of insufficient provisions, &c.) is made certifies in such statement as aforesaid that there was no reasonable ground for such complaint, each of the parties so complaining shall be liable to forfeit to the owner out of his wages a sum not exceeding one week's wages.

Allowance for short or bad Provisions.

223. In the following cases (that is to say)

- (1.) If during a voyage the allowance of any of the provisions which any seaman has by his agreement stipulated for is reduced (except in accordance with any regulations for reduction by way of punishment contained in the agreement, and also except for any time during which such seaman wilfully and without sufficient cause refuses or

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neglects to perform his duty, or is lawfully under confinement for misconduct, either on board or on shore):

- (2.) If it is shown that any of such provisions are or have during the voyage been bad in quality and unfit for use:

The seaman shall receive by way of compensation for such reduction or bad quality, according to the time of its continuance, the following sums, to be paid to him in addition to and to be recoverable as wages; (that is to say,)

- (1.) If his allowance is reduced by any quantity not exceeding one-third of the quantity specified in the agreement, a sum not exceeding fourpence a day:
- (2.) If his allowance is reduced by more than one-third of such quantity, eightpence a day:
- (3.) In respect of such bad quality as aforesaid, a sum not exceeding one shilling a day:

But if it is shown to the satisfaction of the Court before which the case is tried that any provisions the allowance of which has been reduced could not be procured or supplied in proper quantities, and that proper and equivalent substitutes were supplied in lieu thereof, the Court shall take such circumstances into consideration, and shall modify or refuse compensation as the justice of the case may require.

Expense of Medical Attendance and Subsistence in case of Illness, and of Burial in case of Death, how to be defrayed.

228. The following rules shall be observed with respect to expenses attendant on illness and death; (that is to say,)

- (1.) If the master or any seaman or apprentice receives any hurt or injury in the service of the ship to which he belongs, the expense of providing the necessary surgical and medical advice, with attendance and medicines, and of his subsistence until he is cured, or dies, or is brought back to some port in the United Kingdom, if shipped in the United Kingdom, or if shipped in some British possession to some port in such possession, and of his conveyance to such port, and the expense (if any) of his burial, shall be defrayed by the owner of such ship, without any deduction on that account from the wages of such master, seaman, or apprentice:
- (2.) If the master or any seaman or apprentice is on account of any illness temporarily removed from his ship for the purpose of preventing infection, or otherwise for the convenience of the ship, and subsequently returns to his duty, the expense of such removal and of providing the necessary advice with attendance and medicines and of his subsistence whilst away from the ship, shall be defrayed in like manner:
- (3.) The expense of all medicines and surgical or medical advice and attendance given to any master, seaman, or apprentice whilst on board his ship shall be defrayed in like manner:
- (4.) In all other cases any reasonable expenses duly incurred by the owner for any seaman in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any seaman or apprentice who dies whilst on service, shall, if duly proved, be deducted from the wages of such seaman or apprentice.

Expenses, if paid by Consul, to be recoverable from Owner.

229. If any such expenses in respect of the illness, injury, or hurt

of any seaman or apprentice, as are to be borne by the owner, are **A.D. 1854.** paid by any consular officer or other person on behalf of her Majesty, or if any other expenses in respect of the illness, injury, or hurt of any seaman or apprentice whose wages are not accounted for to such officer under the provisions hereinbefore contained in that behalf are so paid, such expenses shall be repaid to such officer or other person by the master of the ship, and if not so repaid, the amount thereof, with costs, shall be a charge upon the ship, and be recoverable from the said master or from the owner of the ship for the time being as a debt due to her Majesty, and shall be recoverable either by ordinary process of law or in the manner in which seamen are hereby enabled to recover wages; and in any proceeding for the recovery thereof the production of a certificate of the facts, signed by such officer or other person, together with such vouchers (if any) as the case requires, shall be sufficient proof that the said expenses were duly paid by such consular officer or other person as aforesaid.

PROTECTION OF SEAMEN FROM IMPOSITION.

Sale of and Charge upon Wages to be invalid.

233. No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court; and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of such wages, or of any attachment, incumbrance, or arrestment thereon; and no assignment or sale of such wages, or of salvage made prior to the accruing thereof, shall bind the party making the same; and no power of attorney or authority for the receipt of any such wages or salvage shall be irrevocable.

No Debt exceeding Five Shillings recoverable till End of Voyage.

234. No debt exceeding in amount five shillings, incurred by any seaman after he has engaged to serve, shall be recoverable until the service agreed for is concluded.

DISCIPLINE.

Misconduct endangering Ship, or Life, or Limb a Misdemeanour.

239. Any master of or any seaman or apprentice belonging to any British ship who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of such ship, or tending immediately to endanger the life or limb of any person belonging to or on board of such ship, or who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on board of such ship from immediate danger to life or limb, shall for every such offence be deemed guilty of a misdemeanour.

Power of Admiralty Courts to remove Master.

240. Any Court having Admiralty jurisdiction in any of her Majesty's dominions may, upon application by the owner of any ship being within the jurisdiction of such Court, or by the part owner or

A.D. 1854 consignee, or by the agent of the owner, or by any certificated mate, or by one-third or more of the crew of such ship, and upon proof on oath to the satisfaction of such Court that the removal of the master of such ship is necessary, remove him accordingly; and may also, with the consent of the owner or his agent, or the consignee of the ship, or if there is no owner or agent of the owner or consignee of the ship within the jurisdiction of the Court, then without such consent, appoint a new master in his stead; and may also make such order, and may require such security in respect of costs in the matter, as it thinks fit.

Offences of Seamen and Apprentices, and their Punishments.

243. Whenever any seaman who has been lawfully engaged, or any apprentice to the sea service commits any of the following offences he shall be liable to be punished summarily as follows; (that is say,)

Desertion.

- (1.) For desertion he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also to forfeit all or any part of the clothes and effects he leaves on board, and all or any part of the wages or emoluments which he has then earned, and also, if such desertion takes place abroad, at the discretion of the Court, to forfeit all or any part of the wages or emoluments he may earn in any other ship in which he may be employed until his next return to the United Kingdom, and to satisfy any excess of wages paid by the master or owner of the ship from which he deserts to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him:

Neglecting or refusing to join, or to proceed to Sea, Absence within Twenty-four Hours before sailing and Absence without Leave.

- (2.) For neglecting or refusing, without reasonable cause, to join his ship or to proceed to sea in his ship, or for absence without leave at any time within twenty-four hours of the ship's sailing from any port, either at the commencement or during the progress of any voyage, or for absence at any time without leave and without sufficient reason from his ship or from his duty, not amounting to desertion or not treated as such by the master, he shall be liable to imprisonment for any period not exceeding ten weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit out of his wages a sum not exceeding the amount of two days' pay, and in addition for every twenty-four hours' of absence either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute:

Quitting without Leave before Ship is secured.

- (3.) For quitting the ship without leave after her arrival at her port of delivery and before she is placed in security, he shall be liable to forfeit out of his wages a sum not exceeding one month's pay:

Act of Disobedience.

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- (4.) For wilful disobedience to any lawful command he shall be liable to imprisonment for any period not exceeding four weeks, with or without hard labour, and also at the discretion of the Court, to forfeit out of his wages a sum not exceeding two days' pay :

Continued Disobedience.

- (5.) For continued wilful disobedience to lawful commands, or continued wilful neglect of duty, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit for every twenty-four hours' continuance of such disobedience or neglect either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute :

Assault on Officers.

- (6.) For assaulting any master or mate he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour :

Combining to Disobey.

- (7.) For combining with any other or others of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship or the progress of the voyage, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour :

Wilful Damage and Embezzlement.

- (8.) For wilfully damaging the ship, or embezzling or wilfully damaging any of her stores or cargo, he shall be liable to forfeit out of his wages a sum equal in amount to the loss thereby sustained, and also, at the discretion of the Court, to imprisonment for any period not exceeding twelve weeks, with or without hard labour :

Act of Smuggling causing Loss to Owner.

- (9.) For any act of smuggling of which he is convicted, and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay to such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage ; and the whole or a proportionate part of his wages may be retained in satisfaction or on account of such liability, without prejudice to any further remedy.

Deserters may be sent on board in lieu of being imprisoned.

247. Whenever any seaman or apprentice is brought before any Court on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, such Court may, if the master or the owner or his agent so requires, instead of committing the offender to prison, cause him to be conveyed on board for the purpose of proceeding on the voyage,

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or deliver him to the master or any mate of the ship, or the owner or his agent, to be by them so conveyed, and may in such case order any costs and expenses properly incurred by or on behalf of the master or owner by reason of the offence to be paid by the offender, and, if necessary, to be deducted from any wages which he has then earned, or which by virtue of his then existing engagement he may afterwards earn.

Entries and Certificates of Desertion abroad to be copied, sent home, and admitted in Evidence.

249. In all cases of desertion from any ship in any place abroad the master shall produce the entry of such desertion in the official log-book to the person or persons hereby required to endorse on the agreement a certificate of such desertion; and such person or persons shall thereupon make and certify a copy of such entry and also a copy of the said certificate of desertion; and if such person is a public functionary he shall, and in other cases the said master shall forthwith transmit such copies to the registrar general of seamen in England; and the said registrar shall, if required, cause the same to be produced in any legal proceedings; and such copies, if purporting to be so made and certified as aforesaid, and certified to have come from the custody of the said registrar, shall in any legal proceeding relating to such desertion be received as evidence of the entries therein appearing.

Facilities for proving Desertion, so far as concerns Forfeiture of Wages.

250. Whenever a question arises whether the wages of any seaman or apprentice are forfeited for desertion, it shall be sufficient for the party insisting on the forfeiture to show that such seaman or apprentice was duly engaged in or that he belonged to the ship from which he is alleged to have deserted, and that he quitted such ship before the completion of the voyage or engagement, or if such voyage was to terminate in the United Kingdom and the ship has not returned, that he is absent from her, and that an entry of the desertion has been duly made in the official log-book; and thereupon the desertion shall, so far as relates to any forfeiture of wages or emoluments under the provisions hereinbefore contained, be deemed to be proved, unless the seaman or apprentice can produce a proper certificate of discharge, or can otherwise show to the satisfaction of the Court that he had sufficient reasons for leaving his ship.

Costs of procuring Imprisonment may to the Extent of Three Pounds be deducted from Wages.

251. Whenever in any proceeding relating to seamen's wages it is shown that any seaman or apprentice has in the course of the voyage been convicted of any offence by any competent tribunal, and rightfully punished therefore by imprisonment or otherwise, the Court hearing the case may direct a part of the wages due to such seaman, not exceeding three pounds, to be applied in reimbursing any costs properly incurred by the master in procuring such conviction and punishment.

Amount of Forfeiture how to be ascertained when Seamen contract for A.D. 1854.
the Voyage.

252. Whenever any seaman contracts for wages by the voyage, or by the run, or by the share, and not by the month or other stated period of time, the amount of forfeiture to be incurred under this Act shall be taken to be an amount bearing the same proportion to the whole wages or share as a calendar month or other the period hereinbefore mentioned in fixing the amount of such forfeiture (as the case may be) bears to the whole time spent in the voyage; and if the whole time spent in the voyage does not exceed the period for which the pay is to be forfeited, the forfeiture shall extend to the whole wages or share.

Application of Forfeitures.

253. All clothes, effects, wages, and emoluments which under the provisions hereinbefore contained are forfeited for desertion, shall be applied in the first instance in or towards the reimbursement of the expenses occasioned by such desertion to the master or owner of the ship from which the desertion has taken place; and may, if earned subsequently to the desertion, be recovered by such master, or by the owner or his agent, in the same manner as the deserter might have recovered the same if they had not been forfeited; and in any legal proceeding relating to such wages the Court may order the same to be paid accordingly; and subject to such reimbursement the same shall be paid into the receipt of her Majesty's Exchequer in such manner as the Treasury may direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom; and in all other cases of forfeiture of wages under the provisions hereinbefore contained, the forfeiture shall, in the absence of any specific directions to the contrary, be for the benefit of the master or owner by whom the wages are payable.

Questions of Forfeitures may be decided in suits for Wages.

254. Any question concerning the forfeiture of or deductions from the wages of any seaman or apprentice may be determined in any proceeding lawfully instituted with respect to such wages, notwithstanding that the offence in respect of which such question arises, though hereby made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding.

Penalty for false Statement as to last Ship or Name.

255. If any seaman on or before being engaged wilfully and fraudulently makes a false statement of the name of his last ship or last alleged ship, or wilfully and fraudulently makes a false statement of his own name, he shall incur a penalty not exceeding five pounds; and such penalty may be deducted from any wages he may earn by virtue of such engagement as aforesaid, and shall, subject to reimbursement of the loss and expenses (if any) occasioned by any previous desertion, be paid and applied in the same manner as other penalties payable under this Act.

Fines to be deducted from Wages, and paid to Shipping Master.

256. Whenever any seaman commits an act of misconduct for which his agreement imposes a fine, and which it is intended to

A.D. 1854. punish by enforcing such fine, an entry thereof shall be made in the official log-book, and a copy of such entry shall be furnished, or the same shall be read over to the offender, and an entry of such reading over and of the reply (if any) made by the offender, shall be made, in the manner and subject to the conditions hereinbefore specified with respect to the offences against discipline specified in and punishable under this Act; and such fine shall be deducted and paid over as follows; (that is to say,) if the offender is discharged in the United Kingdom, and the offence and such entries in respect thereof as aforesaid are proved, in the case of a foreign-going ship to the satisfaction of the shipping master before whom the offender is discharged, and in the case of a home-trade ship to the satisfaction of the shipping master at or nearest to the place at which the crew is discharged, the master or owner shall deduct such fine from the wages of the offender, and pay the same over to such shipping master; and if before the final discharge of the crew in the United Kingdom any such offender as aforesaid enters into any of her Majesty's ships, or is discharged abroad, and the offence and such entries as aforesaid are proved to the satisfaction of the officer in command of the ship into which he so enters, or of the consular officer, officer of customs, or other person by whose sanction he is so discharged, the fine shall thereupon be deducted as aforesaid, and an entry of such deduction shall then be made in the official log-book (if any) and signed by such officer or other person; and on the return of the ship to the United Kingdom the master or owner shall pay over such fine, in the case of foreign-going ships, to the shipping master before whom the crew is discharged, and in the case of home-trade ships to the shipping master at or nearest to the place at which the crew is discharged; and if any master or owner neglects or refuses to pay over any such fine in manner aforesaid, he shall for each such offence incur a penalty not exceeding six times the amount of the fine retained by him: Provided that no act of misconduct for which any such fine as aforesaid has been inflicted and paid shall be otherwise punished under the provisions of this Act.

CRIMES COMMITTED ABROAD.

Offences committed by British Seamen at foreign Ports to be within Admiralty Jurisdiction.

267. All offences against property or person committed in or at any place either ashore or afloat out of her Majesty's dominions by any master, seaman, or apprentice who at the time when the offence is committed is or within three months previously has been employed in any British ship shall be deemed to be offences of the same nature respectively, and be liable to the same punishments respectively, and be inquired of, heard, tried, determined, and adjudged in the same manner and by the same courts and in the same places as if such offences had been committed within the jurisdiction of the Admiralty of England; and the costs and expenses of the prosecution of any such offence may be directed to be paid as in the case of costs and expenses of prosecutions for offences committed within the jurisdiction of the Admiralty of England.

Collisions to be entered in Official Log.

328. In every case of collision, in which it is practicable so to do, the master shall immediately after the occurrence cause a statement

thereof and of the circumstances under which the same occurred, to be entered in the official log-book (if any), such entry to be signed by the master, and also by the mate or one of the crew, and in default shall incur a penalty not exceeding twenty pounds. A.D. 1854.

PART VIII.

WRECKS, CASUALTIES, AND SALVAGE.

INQUIRIES INTO WRECKS.

APPOINTMENT AND DUTIES OF RECEIVERS.

Admiral not to interfere with Wreck.

440. No admiral, vice-admiral, or other person, under whatever denomination, exercising Admiralty jurisdiction, shall as such, by himself or his agents, receive, take, or interfere with any wreck except as hereinafter mentioned.

Duty of Receiver when any Ship is Stranded or in Distress.

441. Whenever any ship or boat is stranded or in distress at any place on the shore of the sea or of any tidal water within the limits of the United Kingdom, the receiver of the district within which such place is situate shall, upon being made acquainted with such accident, forthwith proceed to such place, and upon his arrival there he shall take the command of all persons present, and assign such duties to each person, and issue such directions, as he may think fit with a view to the preservation of such ship or boat, and the lives of the persons belonging thereto, and the cargo and apparel thereof; and if any person wilfully disobeys such directions, he shall forfeit a sum not exceeding fifty pounds; but it shall not be lawful for such receiver to interfere between the master of such ship or boat and his crew in matters relating to the management thereof, unless he is requested so to do by such master.

Power in case of a Ship being in Distress to pass over adjoining Lands with Carriages.

446. Whenever any such accident as aforesaid occurs to any ship or boat, all persons may, for the purpose of rendering assistance to such ship or boat, or saving the lives of the persons on board the same, or the cargo or apparel thereof, unless there is some public road equally convenient, pass and repass either with or without carriages or horses over any adjoining lands, without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and may also, on the like condition, deposit on such lands any cargo or other article recovered from such ship or boat; and all damage that may be sustained by any owner or occupier, in consequence of any such passing or repassing or deposit as aforesaid, shall be a charge on the ship, boat, cargo, or articles in respect of or by which such damage was occasioned, and shall, in default of payment, be recoverable in the same manner as salvage is hereby made recoverable; and the amount payable in respect thereof, if disputed, shall be determined in the same manner as the amount of salvage is hereby in case of dispute directed to be determined.

A.D. 1854. *Power of Receiver to institute Examination with respect to Ships in Distress.*

448. Any receiver, or in his absence any justice of the peace, shall, as soon as conveniently may be, examine upon oath (which oath they are hereby respectively empowered to administer), any person belonging to any ship which may be or may have been in distress on the coasts of the United Kingdom, or any other person who may be able to give any account thereof or of the cargo or stores thereof, as to the following matters; (that is to say,)

- (1.) The name and description of the ship :
- (2.) The name of the master and of the owners :
- (3.) The names of the owners of the cargo :
- (4.) The ports or places from and to which the ship was bound :
- (5.) The occasion of the distress of the ship :
- (6.) The services rendered :
- (7.) Such other matters or circumstances relating to such ship, or to the cargo on board the same, as the receiver or justice thinks necessary :

And such receiver or justice shall take the examination down in writing, and shall make two copies of the same, of which he shall send one to the Board of Trade, and the other to the secretary of the committee for managing the affairs of Lloyd's in London, and such last-mentioned copy shall be placed by the said secretary in some conspicuous situation for the inspection of persons desirous of examining the same; and for the purposes of such examination, every such receiver or justice as aforesaid shall have all the powers given by the first part of this Act to inspectors appointed by the Board of Trade.

Original or certified Copy of Examination to be prima facie evidence.

449. This section, relating to any examination taken in writing or a copy thereof, purporting to be certified under the hand of the receiver or justice before whom such examination was taken, as evidence in any court of justice, or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, is repealed by 39 & 40 Vict. c. 80, s. 45.

Rules to be observed by Persons finding Wreck.

450. The following rules shall be observed by any person finding or taking possession of wreck within the United Kingdom; (that is to say,)

- (1.) If the person so finding or taking possession of the same is the owner, he shall as soon as possible give notice to the receiver of the district within which such wreck is found, stating that he has so found or taken possession of the same; and he shall describe in such notice the marks by which such wreck is distinguished :
- (2.) If any person not being the owner finds or takes possession of any wreck, he shall as soon as possible deliver the same to such receiver as aforesaid :

And any person making default in obeying the provisions of this section shall incur the following penalties; (that is to say,)

- (3.) If he is the owner and makes default in performing the several things, the performance of which is hereby imposed on an owner,

He shall incur a penalty not exceeding one hundred A.D. 1854.
pounds:

- (4.) If he is not the owner and makes default in performing the several things, the performance of which is hereby imposed on any person not being an owner,

He shall forfeit all claim to salvage;

He shall pay to the owner of such wreck, if the same is claimed, but if the same is unclaimed then to the person entitled to such unclaimed wreck, double the value of such wreck (such value to be recovered in the same way as a penalty of like amount); and

He shall incur a penalty not exceeding one hundred pounds.

Goods if deemed perishable or of small value may be sold immediately.

453. In cases where any wreck in the custody of any receiver is under the value of five pounds, or is of so perishable a nature or so much damaged that the same cannot, in his opinion, be advantageously kept, or if the value thereof is not sufficient to defray the charge of warehousing, the receiver may sell the same before the expiration of the period hereinafter mentioned, and the money raised by such sale, after defraying the expenses thereof, shall be held by the receiver for the same purposes, and subject to the same claims, for and to which the article sold would have been held and liable if it had remained unsold.

Payments to be made to Receiver.

455. There shall be paid to all receivers appointed under this Act the expenses properly incurred by them in the performance of their duties, and also in respect of the several matters specified in the table marked V in the schedule hereto, such fees, not exceeding the amount therein mentioned, as may from time to time be directed by the Board of Trade; and the receiver shall have the same lien, and be entitled to the same remedies, for the recovery of such expenses and fees as a salvor has or is entitled to in respect of salvage due to him; but, save as aforesaid, no receiver appointed under this Act shall, as such, be entitled to any remuneration whatsoever.

SALVAGE IN THE UNITED KINGDOM.

Salvage in respect of Services rendered in the United Kingdom.

458. In the following cases; (that is to say,)

Whenever any ship or boat is stranded or otherwise in distress, on the shore of any sea or tidal water situate within the limits of the United Kingdom, and services rendered by any person,

- (1.) In assisting such ship or boat;
- (2.) In saving the lives of the persons belonging to such ship or boat;
- (3.) In saving the cargo or apparel of such ship or boat, or any portion thereof;

And whenever any wreck is saved by any person other than a receiver within the United Kingdom;

There shall be payable by the owners of such ship or boat, cargo, apparel, or wreck, to the person by whom such services or any of

A.D. 1854. them are rendered, or by whom such wreck is saved, a reasonable amount of salvage, together with all expenses properly incurred by him in the performance of such services or the saving of such wreck, the amount of such salvage and expenses (which expenses are hereinafter included under the term salvage) to be determined in case of dispute in manner hereinafter mentioned.

Salvage for Life may be paid by Board of Trade out of Mercantile Marine Fund.

459. Salvage in respect of the preservation of the life or lives of any person or persons belonging to any such ship or boat as aforesaid shall be payable by the owners of the ship or boat in priority to all other claims for salvage; and in cases where such ship or boat is destroyed, or where the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage due in respect of any life or lives, the Board of Trade may in its discretion award to the salvors of such life or lives out of the Mercantile Marine Fund such sum or sums as it deems fit, in whole or part satisfaction of any amount of salvage so left unpaid in respect of such life or lives.

Disputes as to Salvage how to be settled.

460. Disputes with respect to salvage arising within the boundaries of the Cinque Ports shall be determined in the manner in which the same have hitherto been determined; but whenever any dispute arises elsewhere in the United Kingdom between the owners of any such ship, boat, cargo, apparel, or wreck as aforesaid, and the salvors, as to the amount of salvage, and the parties to the dispute cannot agree as to the settlement thereof by arbitration or otherwise,

Then, if the sum claimed does not exceed two hundred pounds,

Such dispute shall be referred to the arbitration of any two justices of the peace resident as follows; (that is to say)

In case of wreck, resident at or near the place where such wreck is found:

In cases of services rendered to any ship or boat, or to the persons, cargo, or apparel belonging thereto, resident at or near the place where such ship or boat is lying, or at or near the first port or place in the United Kingdom into which such ship or boat is brought after the occurrence of the accident by reason whereof the claim to salvage arises:

But if the sum claimed exceeds two hundred pounds,

Such dispute may, with the consent of the parties, be referred to the arbitration of such justices as aforesaid, but if they do not consent shall in England be decided by the High Court of Admiralty of England, in Ireland by the High Court of Admiralty of Ireland, and in Scotland by the Court of Session; subject to this proviso, that if the claimants in such dispute do not recover in such Court of Admiralty or Court of Session a greater sum than two hundred pounds, they shall not, unless the court certifies that the case is a fit one to be tried in a superior court, recover any costs, charges, or expenses incurred by them in the prosecution of their claim:

And every dispute with respect to salvage may be heard and adjudicated upon on the application either of the salvor or of the owner of the property salvaged, or of their respective agents. A.D. 1854.

Manner in which Justices may decide Disputes.

461. Whenever in pursuance of this Act any dispute as to salvage is referred to the arbitration of two justices, they may either themselves determine the same, with power to call to their assistance any person conversant with maritime affairs as assessor, or they may if a difference of opinion arises between them, or without such difference, if they think fit, appoint some person conversant with maritime affairs as umpire to decide the point in dispute; and such justices or their umpire shall make an award as to the amount of salvage payable, within the following times, that is to say, the said justices within forty-eight hours after such dispute has been referred to them, and the said umpire within forty-eight hours after his appointment, with power nevertheless for such justices or umpire by writing under their or his hands or hand, to extend the time within which they and he are hereby respectively directed to make their or his award.

Costs of Arbitration.

462. There shall be paid to every assessor and umpire, who may be so appointed as aforesaid in respect of his services, such sum not exceeding five pounds as the Board of Trade may from time to time direct; and all the costs of such arbitration, including any such payments as aforesaid, shall be paid by the parties to the dispute, in such manner and in such shares and proportions as the said justices or as the said umpire may direct by their or his award.

Justices may call for Documents, and administer Oaths.

463. The said justices or their umpire may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Appeal to Courts of Admiralty.

464. If any person is aggrieved by the award made by such justices or such umpire as aforesaid, he may in England appeal to the High Court of Admiralty of England, in Ireland to the High Court of Admiralty of Ireland, and in Scotland to the Court of Session; but no such appeal shall be allowed unless the sum in dispute exceeds fifty pounds, nor unless within ten days after the date of the award the appellant gives notice to the justices to whom the matter was referred of his intention to appeal, nor unless the appellant proceeds to take out a monition, or to take such other proceeding as according to the practice of the Court of Appeal is necessary for the institution of an appeal, within twenty days from the date of the award.

Justices to transmit Copy of Proceedings and Certificate of Value to Court of Appeal.

465. Whenever any appeal is made in manner hereinbefore provided, the justices shall transmit to the proper officer of the court of appeal a copy on unstamped paper, certified under their

A.D. 1854. hands to be a true copy of the proceedings had before such justices or their umpire (if any) and of the award so made by them or him, accompanied with their or his certificate in writing of the gross value of the article respecting which salvage is claimed; and such copy and certificate shall be admitted in the Court of Appeal as evidence in the cause.

Payment of Salvage to whom to be made in case of Dispute as to Apportionment.

466. Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained, either by agreement or by the award of such justices or their umpire, but a dispute arises as to the apportionment thereof among several claimants, then, if the amount does not exceed two hundred pounds, it shall be lawful for the party liable to pay the amount so due to apply to the receiver of the district for liberty to pay the amount so ascertained to him: and he shall, if he thinks fit, receive the same accordingly, and grant a certificate under his hand, stating the fact of such payment and the services in respect of which it is made; and such certificate shall be a full discharge and indemnity to the person or persons to whom it is given, and to their ship, boats, cargo, apparel, and effects, against the claims of all persons whomsoever in respect of the services therein mentioned; but if the amount exceeds two hundred pounds, it shall be apportioned in a manner hereinafter mentioned.

Apportionment of Salvage.

467. Upon the receipt of any such amount as aforesaid the receiver shall with all convenient speed proceed to distribute the same among the several persons entitled thereto, upon such evidence and in such shares and proportions as he thinks fit, with power to retain any moneys that may appear to him to be payable to any absent parties; but any distribution made in pursuance of this section shall be final and conclusive against the rights of all persons claiming to be entitled to any portion of the moneys so distributed.

Manner of enforcing Payment of Salvage.

468. Whenever any salvage is due to any person under this Act, the receiver shall act as follows; (that is to say),

- (1.) If the same is due in respect of services rendered in assisting any ship or boat, or in saving the lives of persons belonging to the same, or the cargo or apparel thereof,

He shall detain such ship or boat and the cargo and apparel belonging thereto until payment is made, or process has been issued by some competent court for the detention of such ship, boat, cargo, or apparel:

- (2.) If the same is due in respect of the saving of any wreck, and such wreck is not sold as unclaimed in pursuance of the provisions hereinafter contained,

He shall detain such wreck until payment is made, or process has been issued in manner aforesaid:

But it shall be lawful for the receiver, if at any time previously to the issue of such process security is given to his satisfaction for the amount of salvage due, to release from his custody any ship, boat, cargo, apparel, or wreck so detained by him as aforesaid; and in

cases where the claim for salvage exceeds two hundred pounds, it shall be lawful in England for the High Court of Admiralty of England, in Ireland for the High Court of Admiralty of Ireland, and in Scotland for the Court of Session, to determine any question that may arise concerning the amount of the security to be given or the sufficiency of the sureties; and in all cases where bond or other security is given to the receiver for an amount exceeding two hundred pounds, it shall be lawful for the salvor or for the owner of the property salvaged, or their respective agents, to institute proceedings in such last-mentioned courts for the purpose of having the questions arising between them adjudicated upon, and the said courts may enforce payment of the said bond or other security, in the same manner as if bail had been given in the said courts. A.D. 1854.

Power of Receiver to sell Property salvaged in cases of Non-Payment.

469. Whenever any ship, boat, cargo, apparel, or wreck is detained by any receiver for non-payment of any sums so due as aforesaid, and the parties liable to pay the same are aware of such detention, then, in the following cases; (that is to say,)

- (1.) In cases where the amount is not disputed, and payment thereof is not made within twenty days after the same has become due :
- (2.) In cases where the amount is disputed, but no appeal lies from the first tribunal to which the dispute is referred, and payment thereof is not made within twenty days after the decision of such first tribunal :
- (3.) In cases where the amount is disputed, and an appeal lies from the decision of the first tribunal to some other tribunal, and payment thereof is not made within such twenty days as last aforesaid, or such monition as hereinbefore mentioned is not taken out within such twenty days, or such other proceedings as are according to the practice of such other tribunal necessary for the prosecution of an appeal are not instituted within such twenty days :

The receiver may forthwith sell such ship, boat, cargo, apparel, or wreck, or a sufficient part thereof, and out of the proceeds of the sale, after payment of all expenses thereof, defray all sums of money due in respect of expenses, fees, and salvage, paying the surplus, if any, to the owners of the property sold, or other the parties entitled to receive the same.

Subject to Payment of Expenses, Fees, and Salvage, Owner entitled to Wreck.

470. Subject to the payment of such expenses, fees, and salvage as aforesaid, the owner of any wreck who establishes his claim thereto to the satisfaction of the receiver within one year from the date at which such wreck has come into the possession of the receiver, shall be entitled to have the same delivered up to him.

UNCLAIMED WRECK IN THE UNITED KINGDOM.

Receiver to deliver up Possession of Unclaimed Wreck to Lord of Manor or other Person entitled.

471. In the event of no owner establishing a claim to wreck found in any place in the United Kingdom before the expiration of a year

A.D. 1854. from the date at which the same has come into the possession of the receiver, then, if any such admiral, vice-admiral, lord of any manor, or other person as aforesaid has given notice to and has proved to the satisfaction of the receiver that he is entitled to wreck found at such place, the receiver shall, upon payment of all expenses, fees, and salvage due in respect of such wreck, deliver up possession thereof to such admiral, vice-admiral, lord of the manor, or other person; and in case of dispute as to the amount of the sums so payable, and also in case of default being made in payment thereof, such dispute shall be determined and payment enforced in the manner in which such amount and payment is hereby directed to be determined and enforced in cases where any owner establishes his claim to wreck.

Disputed Title to Wreck how to be decided.

472. If any dispute arises between the receiver and any such admiral, vice-admiral, lord of any manor, or other person as aforesaid as to the validity of his title to wreck, or if divers persons claim to be entitled to wreck found at the same place, the matter in dispute may be decided by two justices in the same manner in which disputes as to salvage coming within the jurisdiction of justices are hereinbefore directed to be determined.

Appeal from Decision of Justices.

473. If any party to such dispute is unwilling to refer the same to two justices, or, having so referred the same, is dissatisfied with their decision he may within three months from the expiration of such year as aforesaid, or from the date of such decision as aforesaid, as the case may be, take such proceedings as he may be advised in any court of law, equity, or Admiralty having jurisdiction in the matter, for establishing his title.

Unclaimed Wreck to be Sold.

475. If no owner establishes his claim to wreck found at any place before the expiration of such period of a year as aforesaid, and if no admiral, vice-admiral, lord of any manor, or person other than her Majesty, her heirs and successors, is proved to be entitled to such wreck, the receiver shall forthwith sell the same, and after payment of all expenses attending such sale, and deducting therefrom his fees, and all expenses (if any) incurred by him, and paying to the salvors such amount of salvage as the Board of Trade may in each case or by any general rule determine, pay the same into the receipt of her Majesty's Exchequer in such manner as the Treasury may direct, and the same shall be carried to and form part of the Consolidated Fund of the United Kingdom.

JURISDICTION OF THE HIGH COURT OF ADMIRALTY.

High Court of Admiralty may decide on all Salvage Cases, whether on Sea or Land.

476. Subject to the provisions of this Act, the High Court of Admiralty shall have jurisdiction to decide upon all claims whatsoever relating to salvage, whether the services in respect of which salvage is claimed were performed upon the high seas, or within the body of any county, or partly in one place and partly in the other, and whether the wreck is found at sea or cast upon the land, or partly in the sea and partly on land.

OFFENCES IN RESPECT OF WRECK.

A.D. 1854.

In case of Ship wrecked being plundered by a tumultuous Assemblage, the Hundred to be liable for damages.

477. Whenever any ship or boat is stranded or otherwise in distress on or near the shore of any sea or tidal water in the United Kingdom, and such ship or boat, or any part of the cargo or apparel thereof, is plundered, damaged, or destroyed by any persons riotously and tumultuously assembled together, whether on shore or afloat, full compensation shall be made to the owner of such boat, cargo, or apparel, as follows; (that is to say,)

In England by the inhabitants of the hundred, wapentake, ward, or district in the nature of a hundred, by whatever name denominated, in or nearest to which the said offence is committed, in manner provided by an Act of the eighth year of the reign of King George the Fourth, chapter thirty-one, in case of the destruction of churches and other buildings by a riotous assemblage, or as near thereto as circumstances permit :

In Ireland by the inhabitants of the county, county of a city or town, barony, town or towns, parish or parishes, in or nearest to which such offence is committed, in manner provided by an Act of the fourth year of the reign of King William the Fourth, chapter thirty-seven, for the recovery of satisfaction and amends for the malicious demolition of or injury to churches, chapels, and other buildings used for religious worship, according to the usage of the United Church of England and Ireland, or as near thereto as circumstances permit.

SALVAGE BY H. M. SHIPS.

No Claim for Salvage Services to be allowed in respect of loss or risk of her Majesty's Ships or Property.

484. In cases where salvage services are rendered by any ship belonging to her Majesty, or by the commander or crew thereof, no claim shall be made or allowed for any loss, damage, or risk thereby caused to such ship, or to the stores, tackle, or furniture thereof, or for the use of any stores or other articles belonging to her Majesty, supplied in order to effect such services, or for any other expense or loss sustained by her Majesty by reason of such services.

Claims for Salvage by her Majesty's Officers not to be determined without Consent of Admiralty.

485. No claim whatever on account of any salvage services rendered to any ship or cargo, or to any appurtenances of any ship, by the commander, or crew, or part of the crew, of any of her Majesty's ships, shall be finally adjudicated upon, unless the consent of the Admiralty has first been obtained, such consent to be signified by writing under the hand of the Secretary of the Admiralty; and if any person who has originated proceedings in respect of any such claim, fails to prove such consent to the satisfaction of the court, his suit shall stand dismissed, and he shall pay all the costs of such proceedings; provided that any document purporting to give such consent, and to be signed by the Secretary to the Admiralty, shall be *prima facie* evidence of such consent having been given.

A.D. 1864. *Steps to be taken when Salvage Services have been rendered by her Majesty's Ships abroad.*

486. Whenever services for which salvage is claimed are rendered to any ship or cargo, or to any part of any ship or cargo, or to any appurtenances of any ship, at any place out of the United Kingdom, and the four seas adjoining thereto, by the commander, or crew, or part of the crew, of any of her Majesty's ships, the property alleged to be salved shall, if the salvor is justified by the circumstances of the case in detaining it at all, be taken to some port where there is either a consular officer or a Vice-Admiralty Court; and, within twenty-four hours after arriving at such port, the said salvor and the master or other person in charge of the property alleged to be salved shall each deliver to the consular officer or Vice-Admiralty judge there a statement verified on oath, specifying, so far as they respectively can, and so far as the particulars required apply to the case,

- (1.) The place, condition, and circumstances in which the said ship, cargo, or property was at the time when the services were rendered for which salvage is claimed :
 - (2.) The nature and duration of the services rendered :
- And the salvor shall add to this statement,
- (3.) The proportion of the value of the said ship, cargo, and property and of the freight which he claims for salvage, or the values at which he estimates the said ship, freight, cargo, and property respectively, and the several amounts that he claims for salvage in respect of the same :
 - (4.) Any other circumstances he thinks relevant to the said claim :

And the said master or other person in charge of the said ship, cargo, or property shall add to his statement,

- (5.) A copy of the certificate of registry of the said ship, and of the endorsements thereon, stating any change which (to his knowledge or belief) has occurred in the particulars contained in such certificate; and stating also, to the best of his knowledge and belief, the state of the title to the ship for the time being, and of the incumbrances and certificate of mortgage or sale, if any, affecting the same, and the names and places of business, of the owners and incumbrancers :
- (6.) The name and place of business or residence of the freighter (if any) of the said ship, and the freight to be paid for the voyage she is then on :
- (7.) A general account of the quantity and nature of the cargo at the time the salvage services were rendered :
- (8.) The name and place of business or residence of the owner of such cargo and of the consignee thereof :
- (9.) The values at which the said master estimates the said ship, cargo, and property, and the freight respectively, or, if he thinks fit, in lieu of such estimated value of the cargo, a copy of the ship's manifest :
- (10.) The amounts which the master thinks should be paid as salvage for the services rendered :
- (11.) An accurate list of the property saved, in cases where the ship is not saved :
- (12.) An account of the proceeds of the sale of the said ship, cargo, or property, in cases where the same or any of them are sold at such port as aforesaid :

- (13.) The number, capacities, and condition of the crew of the said ship at the time the said services were rendered : A.D. 1354.
- (14.) Any other circumstances he thinks relevant to the matters in question :
- (15.) A statement of his willingness to execute a bond, in the form in the table marked W in the schedule hereto, to such amount as the said consular officer or Vice-Admiralty Judge may fix.

Consular Officer or Judge to fix Amount for which a Bond is to be given.

487. The said consular officer or judge, as the case may be, shall, within four days after receiving the aforesaid statements, fix the amount to be inserted in the said bond at such sum as he thinks sufficient to answer the demand for the salvage services rendered ; but such sum shall not exceed one-half of the value which in his estimation the said ship, freight, ~~and~~ cargo, or any parts thereof in respect of which salvage is claimed, are worth ; and the said consular officer or judge may, if either of the aforesaid statements is not delivered to him within the time hereby required, proceed *ex parte*, but he shall in no case under this Act require the cargo to be unladen ; and the said consular officer may in any proceeding under this Act relating to salvage take affidavits and receive affirmations.

On Master executing Bond, the Right of Detention to cease.

488. The said consular officer or judge shall send notice of the sum which he has so fixed as aforesaid to the said salvor and the said master ; and upon such master executing a bond in such form as aforesaid, with the said sum inserted therein, in the presence of the said officer or judge (who shall attest the same), and delivering the same to the said salvor, the right of the said salvor to detain or retain possession of the said ship, cargo, or property, or any of them in respect of the said salvage claim, shall cease.

Provision for Additional Security in the Case of Ships owned by Persons resident out of Her Majesty's Dominions.

489. If the ship, cargo, or property in respect of which the claim for salvage is made is not owned by persons domiciled in her Majesty's dominions, the right of the salvor to detain or retain possession thereof shall not cease unless the master procures, in addition to the said bond, such security for the due performance of the conditions thereof as the said officer or judge considers sufficient for the purpose, and places the same in the possession or custody of the said officer or judge, or, if the salvor so desires, in the possession or custody of the said officer or judge jointly with any other person whom the said salvor appoints for the purpose.

Documents to be sent to England.

490. The said consular officer or judge shall at the earliest opportunity transmit the said statements and documents so sent to him as
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A.D. 1854. aforesaid, and a notice of the sum he has so fixed as aforesaid, to the High Court of Admiralty of England, or if the said salvor and the said master or other person in charge as aforesaid agree that the said bond shall be adjudicated upon by any Vice-Admiralty Court, to such court.

Whom the Bond shall bind.

491. The said bond shall bind the respective owners of the said ship, freight, and cargo, and their respective heirs, executors, and administrators, for the salvage adjudged to be payable in respect of the said ship, freight, and cargo respectively.

Court in which it is to be adjudicated on.

492. The said bond shall be adjudicated on and enforced by the High Court of Admiralty in England, or if the said salvor and master at the time of the execution of the said bond agree upon any Vice-Admiralty Court, then by such Vice-Admiralty Court; and any such Vice-Admiralty Court may in every proceeding under this Act have and exercise all powers and authorities whatsoever which the said High Court of Admiralty now has or at any time may have in any proceeding whatsoever before it; and in cases where any security for the due performance of the conditions of the said bond has been placed in the possession or custody of the said consular officer or Vice-Admiralty Judge, or of such officer or judge jointly with any other person, the person or persons having the custody of such security shall respectively deal with the same in such manner as the court that adjudicates on the bond directs.

Power of High Court of Admiralty to enforce Bonds.

493. The said High Court of Admiralty shall have power to enforce any bond given in pursuance of this Act in any Vice-Admiralty Court in any part of her Majesty's dominions; and all courts in Scotland, Ireland, and the islands of Jersey, Guernsey, Alderney, Sark, and Man exercising Admiralty jurisdiction shall, upon application, aid and assist the High Court of Admiralty in enforcing the said bonds.

Saving Clause.

494. Any such salvor as aforesaid of any ship, cargo, or property who elects not to proceed under this Act shall have no power to detain the said ship, cargo, or property, but may proceed otherwise for the enforcement of his salvage claim as if this Act had not been passed; and nothing in this Act contained shall abridge or affect the rights of salvors, except in the cases by it provided for.

Documents free from Duty.

495. All bonds, statements, agreements, and other documents made or executed in pursuance of the eighth part of this Act shall, if so made or executed out of the United Kingdom, be exempt from stamp duty.

*Punishment for Forgery and False Representations.*A. D. 1854.

496. Every person who, in any proceeding under provisions contained in the eighth part of this Act relating to salvage by her Majesty's ships, forges, assists in forging, or procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any document, and any person who in any such proceeding puts off or makes use of any such forged or altered document, knowing the same to be so forged or altered, or who in any such proceeding gives or makes, or assists in giving or making, or procures to be given or made, any false evidence or representation, knowing the same to be false, shall be punishable with imprisonment with or without hard labour, for any period not exceeding two years, or if summarily prosecuted and convicted, by imprisonment, with or without hard labour, for any period not exceeding six months.

SALVAGE (GENERAL).

Voluntary Agreement may be made which shall have the same effect as the Bond above mentioned.

497. Whenever services for which salvage is claimed are rendered either by the commander or crew, or part of the crew, of any of her Majesty's ships, or of any other ship, and the salvor voluntarily agrees to abandon his lien upon the ship, cargo and property alleged to be saved, upon the master or other person in charge thereof entering into a written agreement attested by two witnesses to abide the decision of the said High Court of Admiralty, or of any Vice-Admiralty Court, and thereby giving security in that behalf to such amount as may be agreed on by the parties to the said agreement, such agreement shall bind the said ship and the said cargo and the freight payable therefore respectively, and the respective owners of the said ship, freight, and cargo for the time being, and their respective heirs, executors, and administrators, for the salvage which may be adjudged to be payable in respect of the said ship, cargo, and freight respectively to the extent of the security so given as aforesaid, and may be adjudicated upon and enforced in the same manner as the bonds provided for by the eighth part of this Act, in the case of detention for salvage services rendered by her Majesty's ships; and upon such agreement being made the salvor and the master, or other person in charge as aforesaid, shall respectively make such statements as are hereinbefore required to be made by them in case of a bond being given, except that such statements need not be made upon oath; and the salvor shall, as soon as practicable, transmit the said agreement and the said statements to the court in which the said agreement is to be adjudicated upon.

Powers for Courts having Admiralty Jurisdiction to apportion Salvage.

498. Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained, and exceeds two hundred pounds, and whenever the

A.D. 1854. aggregate amount of salvage payable in respect of salvage services rendered elsewhere has been finally ascertained, whatever such amount may be, then if any delay or dispute arises as to the apportionment thereof, any court having Admiralty jurisdiction may cause the same to be apportioned amongst the persons entitled thereto in such manner as it thinks just ; and may for that purpose, if it thinks fit, appoint any person to carry such apportionment into effect, and may compel any person in whose hands or under whose control such amount may be to distribute the same, or to bring the same into court, to be there dealt with as the court may direct, and may for the purposes aforesaid issue such monitions or other processes as it thinks fit.

PART IX.

LIABILITY OF SHIPOWNERS.

502. The ninth part of this Act shall apply to the whole of her Majesty's dominions.

LIMITATION OF LIABILITY.

Owner not liable in respect of certain Articles.

503. No owner of any sea-going ship or share therein shall be liable to make good any loss or damage that may happen without his actual fault or privity of or to any of the following things (that is to say) :

- (1.) Of or to any goods, merchandise or other things whatsoever taken in or put on board any such ship, by reason of any fire happening on board such ship :
- (2.) Of or to any gold, silver, diamonds, watches, jewels, or precious stones taken in or put on board any such ship, by reason of any robbery, embezzlement, making away with or secreting thereof, unless the owner or shipper thereof has, at the time of shipping the same, inserted in his bills of lading or otherwise declared in writing to the master or owner of such ship the true nature and value of such articles.

To any extent whatever.

Provision for separate Losses.

506. The owner of every sea-going ship or share therein shall be liable in respect of every such loss of life, personal injury, loss of or damage to goods as aforesaid arising on distinct occasions to the same extent as if no other loss, injury, or damage had arisen.

A.D. 1854.

MODE OF PROCEDURE.

In case of Loss of Life or Personal Injury, Board of Trade may direct Proceedings.

507. Whenever any such liability as aforesaid has been or is alleged to have been incurred in respect of loss of life or personal injury, the Board of Trade may, in its discretion, after giving not less than three days' notice, by post or otherwise, to the party to be made defendant or defender, by warrant sealed with the seal of such board or signed by one of its secretaries or assistant secretaries, require the sheriff having jurisdiction over any place in the United Kingdom to summon a jury at a time and place to be specified in such warrant for the purpose of determining the following question (that is to say) :

The number, names, and descriptions of all persons killed or injured by reason of any wrongful act, neglect, or default. And upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the superior courts, to meet at such time and place as aforesaid.

Either Party may require Question to be tried by a Special Jury.

508. If either party to the inquiry desire any such question as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, is given to the Board of Trade before it has issued its warrant to the sheriff ; and for that purpose the Board of Trade shall, by its warrant to the sheriff, require him to nominate a special jury for such trial ; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him by themselves or their attorneys or agents at some convenient time and place appointed by him for the purpose of nominating a special jury ; and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury in the manner in which such juries are required by the laws for the time being in force to be nominated or struck by the proper officers of the superior courts ; and the sheriff shall appoint a day, and shall on the day so appointed, proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the superior courts.

Provisions for Conduct of Proceedings.

509. The following provisions shall be applicable to the conduct of proceedings by the Board of Trade (that is to say) :

- (1.) The sheriff shall preside at such inquiry, and the Board of Trade shall be deemed in England and Ireland to be the plaintiff, and in Scotland, the pursuer, both of which terms are hereinafter included in the term plaintiff, with power to appoint any agent to act on its behalf, and shall have all such rights and privileges as the plaintiff is entitled to in

A.D. 1854.

actions at law ; and the owner or owners of the ship or ships by whom such liability as last aforesaid is alleged to have been incurred shall be deemed in England and Ireland to be the defendant, and in Scotland the defender, both of which terms are hereinafter included in the term defendant :

- (2.) Not less than ten days' notice of the time and place of the inquiry shall be served by the Board of Trade on the defendant :
- (3.) Service on the master of any ship shall be deemed good service on the owner thereof, and the master shall, in respect of the proceedings on such inquiry, be deemed the agent and representative of the owner, with power to appear for him on such inquiry, and to do all matters and things which he might himself have done :
- (4.) If the defendant does not appear at the time of such inquiry, the same shall be proceeded with as if he had appeared, upon due proof of service of notice having been made on him in pursuance of this Act :
- (5.) The empannelling of the jury and the summoning and attendance of witnesses shall be conducted and enforced in England and Ireland in manner provided by the Lands Clauses Consolidation Act, 1845, in cases of disputed compensation as to land, and in Scotland in manner provided by the Lands Clauses Consolidation (Scotland) Act, 1845, in like cases, or as near thereto as circumstances permit ; and all provisions in the said Acts having reference to cases where any question of disputed compensation requires to be determined by the verdict of a jury shall, with the requisite alterations, be considered as incorporated with this Act, and to have reference to cases where the question of the liability of any owner in respect of any such accident as aforesaid requires to be determined by the verdict of a jury :
- (6.) In England and Ireland the sheriff shall, if the Board of Trade so requires, or if the defendant so requires and the Board of Trade consents thereto, appoint as assessor a barrister-at-law of competent knowledge and standing :
- (7.) The costs incurred by all parties in and incidental to any such inquiry as aforesaid shall in England and Ireland be taxed by the master of one of her Majesty's Superior Courts of Common Law as between attorney and client, and in Scotland by the auditor of the Court of Session as between agent and client ; and shall, if the verdict in any inquiry is in favour of the plaintiff, be paid by the defendant, but if such verdict is in favour of the defendant, be paid by the Board of Trade out of the Mercantile Marine Fund :
- (8.) The payment of all damages and costs in any such inquiry as aforesaid shall, upon application made to such superior court as aforesaid by the party entitled thereto, be enforced by rule or order of such court or a judge thereof, or otherwise as such court or judge thinks fit :
- (9.) The Board of Trade may make any compromise it thinks

fit as to the damages payable in respect of personal injury, or of the death of any person ; and any damages received in pursuance of such compromise shall, so far as the same extend, be applied in the same manner and be subject to the same rules as if the same were damages recovered on an inquiry instituted by the Board of Trade. **A.D. 1854.**

Rules as to Damages and Application thereof.

510. The following rules shall be observed as to the damages recovered in any such inquiry, and the application thereof (that is to say) :

- (1.) The damages payable in each case of death or injury shall be assessed at thirty pounds :
- (2.) The damages found due on any such inquiry as aforesaid shall be the first charge on the aggregate amount for which the owner is liable, and shall be paid thereout in priority to all other claims :
- (3.) All such damages as aforesaid shall be paid to her Majesty's paymaster-general, and shall be distributed and dealt with by him in such manner as the Board of Trade directs ; and in directing such distribution the Board of Trade shall have power in the first place to deduct and retain any costs incidental thereto ; and in the next place, as regards the sums paid in respect of injuries, shall direct payment to each person injured of such compensation, not exceeding in any case the statutory amount, as the said board thinks fit ; and as regards the sums paid in respect of deaths shall direct payment thereof for the benefit of the husband, wife, parent, and child of the deceased, or any of them, in such shares, upon such evidence, and in such manner as the said board thinks fit :
- (4.) The Board of Trade shall refund to the owner any surplus remaining under its control after making such distribution as aforesaid, and the sum so refunded shall form part of the residue hereinafter mentioned :
- (5.) The Board of Trade shall not, nor shall any person acting under it, be liable to any action, suit, account, claim, or demand whatsoever for or in respect of any act or matter done, or omitted to be done, in the distribution of such damages as aforesaid :
- (6.) If the amount paid to her Majesty's paymaster-general in manner aforesaid is insufficient to meet the demands upon it, the several claims thereon shall abate proportionally.

Any Person who is dissatisfied with the Amount of statutory Damage may bring an Action on his own Account.

511. After the completion of such inquiry as aforesaid, if any person injured estimates the damages payable in respect of such injury, or if the executor or administrator of any deceased person estimates the damages payable in respect of his death at a greater sum than such statutory amount, or, in case of a compromise having been made by the Board of Trade, than the amount accepted by such

A.D. 1854. board by way of compensation for such injury or death as aforesaid, the persons so estimating the same shall, upon repaying or obtaining the repayment by the Board of Trade to the owner of the amount paid by him to the Board of Trade in respect of such injury or death, be at liberty to bring an action for the recovery of damages in the same manner as if no power of instituting an inquiry had hereinbefore been given to the Board of Trade, subject to the following proviso (that is to say): that any damages recoverable by such person shall be payable only out of the residue, if any, of the aggregate amount for which the owner is liable, after deducting all sums paid to her Majesty's paymaster-general in manner aforesaid; and if the damages recovered in such action do not exceed double the statutory amount, such person shall pay to the defendant in such action all the costs thereof, such costs to be taxed in England and Ireland as between attorney and client, and in Scotland as between agent and client.

If Board of Trade decline to institute Proceedings, Individuals may bring Actions.

512. In cases where loss of life or personal injury has occurred by any accident in respect of which the owner of any such ship as aforesaid is or is alleged to be liable in damages, no person shall be entitled to bring any action, or institute any suit or other legal proceeding in the United Kingdom, until the completion of the inquiry (if any) instituted by the Board of Trade, or until the Board of Trade has refused to institute the same; and the Board of Trade shall, for the purpose of entitling any person to bring an action or institute a suit or other legal proceeding, be deemed to have refused to institute such inquiry whenever notice has been served on it by any person of his desire to bring such action or institute such suit or other legal proceeding, and no inquiry is instituted by the Board of Trade in respect of the subject-matter of such intended action, suit, or proceeding for the space of one month after the service of such notice.

Proceedings by Board of Trade after Refusal.

513. Whenever the Board of Trade, having refused in manner aforesaid to institute any inquiry, afterwards determines to institute the same, the damages and costs (if any) recovered on such inquiry shall be payable rateably with and not in priority to the costs and damages recovered in any other action, suit, or legal proceeding.

Proceedings in case of several Claims being made on Owner of Ship.

514. In cases where any liability has been or is alleged to have been incurred by any owner in respect of loss of life, personal injury, or loss of or damage to ships, boats, or goods, and several claims are made or apprehended in respect of such liability, then, subject to the right hereinbefore given to the Board of Trade of recovering damages in the United Kingdom in respect of loss of life or personal injury, it shall be lawful in England or Ireland for the High Court of Chancery, and in Scotland for the Court of Session, and in any British possession for any competent court, to entertain proceedings

at the suit of any owner for the purpose of determining the amount of such liability subject as aforesaid, and for the distribution of such amount rateably amongst the several claimants, with power for any such court to stop all actions and suits pending in any other court in relation to the same subject-matter; and any proceeding entertained by such Court of Chancery or Court of Session, or other competent court, may be conducted in such manner and subject to such regulations as to making any persons interested parties to the same, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of costs, as the court thinks just. A.D. 1854.

Money paid for Damage, how to be accounted for between Part Owners.

515. All sums of money paid for or on account of any loss or damage in respect whereof the liability of the owners of any ship is limited by the ninth part of this Act, and all costs incurred in relation thereto, may be brought into account among part-owners of the same ship in the same manner as money disbursed for the use thereof.

Saving Clause.

516. Nothing in the ninth part of this Act contained shall be construed—

To lessen or take away any liability to which any master or seaman, being also owner or part-owner of the ship to which he belongs, is subject in his capacity of master or seaman; or

To extend to any British ship not being a recognised British ship within the meaning of this Act.

PART X.

Offence where deemed to have been committed.

520. For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed, and every cause of complaint to have arisen, either in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be.

Jurisdiction over Ships lying off the Coasts.

521. In all cases where any district within which any court or justice of the peace or other magistrate has jurisdiction, either under this Act or under any other Act, or at common law, for any purpose whatever, is situate on the coast of any sea, or abutting on or projecting into any bay, channel, lake, river, or other navigable water, every such court, justice of the peace, or magistrate shall have jurisdiction over any ship or boat being on or lying or passing off such coast, or being in or near such bay, channel, lake, river, or navigable water as aforesaid, and over all persons on board such ship or boat, or for the time being belonging thereto, in the same manner as if such ship, boat, or persons were within the limits of the original jurisdiction of such court, justice, or magistrate.

A.D. 1864.

Service to be good if made personally or on board Ship.

522. Service of any summons or other matter in any legal proceeding under this Act shall be good service, if made personally on the person to be served, or at his last place of abode, or if made by leaving such summons for him on board any ship to which he may belong with the person being or appearing to be in command or charge of such ship.

Sums ordered to be paid leviable by Distress on Ship.

523. In all cases where any court, justice, or justices of the peace, or other magistrate has or have power to make an order directing payment to be made of any seaman's wages, penalties, or other sums of money, then, if the party so directed to pay the same is the master or owner of a ship, and the same is not paid at the time and in manner prescribed in the order, the court, justice or justices, or other magistrate who made the order, may, in addition to any other powers they or he may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress or poinding and sale of the said ship, her tackle, furniture, and apparel.

Limitation of Time in Summary Proceedings.

525. The time for instituting summary proceedings under this Act shall be limited as follows (that is to say) :

- (1.) No conviction for any offence shall be made under this Act in any summary proceeding instituted in the United Kingdom, unless such proceeding is commenced within six months after the commission of the offence ; or if both or either of the parties to such proceeding happen during such time to be out of the United Kingdom, unless the same is commenced within two months after they both first happen to arrive or to be at one time within the same :
- (2.) No conviction for any offence shall be made under this Act in any proceeding instituted in any British possession, unless such proceeding is commenced within six months after the commission of the offence ; or if both or either of the parties to the proceeding happen during such time not to be within the jurisdiction of any court capable of dealing with the case, unless the same is commenced within two months after they both first happen to arrive or to be at one time within such jurisdiction :
- (3.) No order for the payment of money shall be made under this Act in any summary proceeding instituted in the United Kingdom unless such proceeding is commenced within six months after the cause of complaint arises ; or, if both or either of the parties happen during such time to be out of the United Kingdom, unless the same is commenced within six months after they both first happen to arrive or to be at one time within the same :
- (4.) No order for the payment of money shall be made under this Act in any summary proceeding instituted in any British possession, unless such proceeding is commenced within six months after the cause of complaint arises ; or, if both or either of the parties to the proceeding happen during such time not to be within the jurisdiction of any court capable

of dealing with the case, unless the same is commenced A.D. 1854.
within six months after they both first happen to arrive
or be at one time within such jurisdiction :

And no provision contained in any other act or acts, ordinance or ordinances, for limiting the time within which summary proceedings may be instituted shall affect any summary proceeding under this Act.

Document proved without calling attesting Witness.

526. Any document required by this Act to be executed in the presence of or to be attested by any witness or witnesses, may be proved by the evidence of any person who is able to bear witness to the requisite facts, without calling the attesting witness or witnesses, or any of them.

Power of Judge of Court of Record or Admiralty to Arrest Foreign Ship that has occasioned Damage.

527. Whenever any injury has in any part of the world been caused to any property belonging to her Majesty, or to any of her Majesty's subjects by any foreign ship, if at any time thereafter such ship is found in any port or river of the United Kingdom, or within three miles of the coast thereof, it shall be lawful for the Judge of any Court of Record in the United Kingdom, or for the Judge of the High Court of Admiralty, or in Scotland the Court of Session, or the sheriff of the county within whose jurisdiction such ship may be, upon its being shown to him by any person applying summarily that such injury was probably caused by the misconduct or want of skill of the master or mariners of such ship, to issue an order directed to any officer of customs or other officer named by such judge, requiring him to detain such ship until such time as the owner, master, or consignee thereof has made satisfaction in respect of such injury, or has given security, to be approved by the judge, to abide the event of any action suit, or other legal proceeding that may be instituted in respect of such injury, and to pay all costs and damages that may be awarded thereon ; and any officer of customs or other officer to whom such order is directed shall detain such ship accordingly.

Power in certain Cases to detain Ship before Application made to Judge.

528. In any case where it appears that before any application can be made under the foregoing section such foreign ship will have departed beyond the limits therein mentioned, it shall be lawful for any commissioned officer on full pay in the military or naval service of her Majesty, or any British officer of customs, or any British consular officer, to detain such ship until such time as will allow such application to be made and the result thereof to be communicated to him ; and no such officer shall be liable for any costs or damages in respect of such detention unless the same is proved to have been made without reasonable grounds.

Who to be Defendant to Suit in such Cases.

529. In any action, suit, or other proceeding in relation to such injury, the person so giving security as aforesaid shall be made defendant or defender, and shall be stated to be the owner of the ship

23 SEA—The receiver of the ship or boat, and the receiver of the cargo of the ship or boat, shall be liable to pay to the committee for managing the affairs of the Admiralty, a fee not exceeding the sum of one hundred pounds for each ship or boat, and a fee not exceeding the sum of one hundred pounds for each cargo.

SCHEDULE

TABLE V. (See Section 455.)

TABLE OF REMUNERATION OF RECEIVERS

	<i>£</i>	<i>s</i>	<i>d</i>
For every examination of each ship or boat, by a receiver with respect to any ship or boat which may be or may have been in distress, a fee not exceeding	1	0	0
But so that in no case shall a larger fee than two pounds be charged for each ship or boat in respect of the same ship, and the same examination, whatever may be the number of the examinations.			
For every report required to be sent by the receiver to the secretary of the committee for managing the affairs of the Admiralty, the sum of	0	10	0
For wreck taken by the receiver into his custody, a percentage of five per cent. upon the value thereof;			
But so that in no case shall the whole amount of percentage so payable exceed twenty pounds.			
In cases where any services are rendered by a receiver, in respect of any ship or boat in distress, not being wreck, or in respect of the cargo or other articles belonging thereto, the following fees instead of a percentage; that is to say,			
If such ship or boat, with her cargo, equals or exceeds in value six hundred pounds, the sum of two pounds for the first, and the sum of one pound for every subsequent day during which the receiver is employed on such service; but if such ship or boat, with her cargo, is less in value than six hundred pounds, one moiety of the above-mentioned sum.			

TABLE W. (See Section 456.)

SALVAGE BOND.

[N.B.—Any of the particulars not known or not required by reason of the claim being only against the cargo, &c., may be omitted.]

WHEREAS certain salvage services are alleged to have been rendered by the ship [insert names of ship and of commander], commander to the merchant ship [insert names of ship and master], master, belonging to [name and place of business or residence of owner of ship], freighted by [the same of the freighter], and to the cargo therein, consisting of [state very shortly the descriptions and quantities of the goods and the names and addresses of their owners and consignees]:

And whereas the said ship and cargo have been brought into the port of [insert name and situation of port], and a statement of the salvage claim has been sent to [insert the name of the consular office or Vice-Admiralty Judge, and of the office he fills], and he has fixed the amount to be inserted in this bond at the sum of [state the sum]:

Now I, the said [master's name], do hereby, in pursuance of the Merchant Shipping Act, 1854, bind the several owners for the time being of the said ship and of the cargo therein, and of the freight payable in respect of such cargo, and their respective heirs, executors, and administrators, to pay among them such sum, not exceeding the said sum of [state the sum fixed], in such proportions and to such persons as [if the parties agree on any other court, substitute the name of it here] the High Court of Admiralty in England shall adjudge to be payable as salvage for the services so alleged to have been rendered as aforesaid.

In witness whereof I have hereunto set my hand and seal, this [insert the date] day of .

Signed, sealed and delivered by the said [master's name].

(L.S.)

In the presence of [name of consular officer or Vice-Admiralty Judge, and of the office he fills].

THE MERCHANT SHIPPING AMENDMENT ACT, 1855.

18 & 19 VICT. CAP. 91.

An Act to Facilitate the Erection and Maintenance of Colonial Lighthouses, and otherwise to Amend the Merchant Shipping Act, 1854. A.D. 1855.
[14th August, 1855.]

WHEREAS it is expedient to make provision for facilitating the erection and maintenance of lighthouses in the British possessions abroad, and otherwise to amend the Merchant Shipping Act, 1854: Be it therefore enacted :

1. This Act may be cited as "The Merchant Shipping Amendment Act, 1855," and shall be taken to be part of the Merchant Shipping Act, 1854, and shall be construed accordingly.

MASTERS AND SEAMEN (PART III. OF MERCHANT SHIPPING ACT, 1854).

Extension of Provisions concerning the Relief of Destitute Seamen.

16. The Board of Trade may issue instructions concerning the relief to be administered to distressed seamen and apprentices, in pursuance of the two hundred and eleventh and two hundred and twelfth sections of the Merchant Shipping Act, 1854, and may by such instructions determine in what cases and under what circumstances and conditions such relief is to be administered; and all powers of recovering expenses incurred with respect to distressed seamen and apprentices, which by the two hundred and thirteenth section of the said Act are given to the Board of Trade, shall extend to all expenses incurred by any foreign government for the purposes aforesaid, and repaid to such government by her Majesty's government, and shall likewise extend to any expenses incurred by the conveying home such seamen or apprentices in foreign as well as British ships; and all provisions concerning the relief of distressed seamen and apprentices, being subjects of her Majesty, which are contained in the said sections of the said Act, and in this section, shall extend to such seamen and

A.D. 1855. apprentices, not being subjects of her Majesty, as are reduced to distress in foreign parts by reason of their having been shipwrecked, discharged, or left behind from any British ship; subject, nevertheless, to such modifications and directions concerning the cases in which relief is to be given to such foreigners, and the country to which they are to be sent, as the Board of Trade may, under the circumstances, think fit to make and issue. (17 & 18 Vict. c. 104, ss. 211, 212, and 213.)

WRECK, CASUALTIES, AND SALVAGE (PART VIII. OF MERCHANT SHIPPING ACT, 1854).

In case of Wreck of Foreign Ships, Consul General to be deemed Agent of Owner.

19. Whenever any articles belonging to or forming part of any foreign ship which has been wrecked on or near the coasts of the United Kingdom, or belonging to or forming part of the cargo thereof, are found on or near such coasts, or are brought into any port in the United Kingdom, the consul general of the country to which such ship, or, in the case of cargo, to which the owners of such cargo may have belonged, or any consular officer of such country authorized in that behalf by any treaty or agreement with such country, shall, in the absence of the owner of such ship or articles, and of the master or other agent of the owner, be deemed to be the agent of the owner, so far as relates to the custody and disposal of such articles.

Remuneration for Services by Coast Guard.

20. In cases where services are rendered by officers or men of the coast guard service in watching or protecting shipwrecked property, then, unless it can be shown that such services have been declined by the owner of such property or his agent at the time they were tendered, or that salvage has been claimed and awarded for such services, the owner of the shipwrecked property shall pay in respect of the said services remuneration according to a scale to be fixed by the Board of Trade, so, however, that such scale shall not exceed any scale by which payment to officers and men of the coast guard for extra duties in the ordinary service of the Commissioners of Customs is for the time being regulated; and such remuneration shall be recoverable by the same means and shall be paid to the same persons and accounted for and applied in the same manner as fees received by receivers appointed under the Merchant Shipping Act, 1854.

THE MERCHANT SHIPPING ACTS, &c., AMENDMENT, 1862.

25 & 26 VICT. CAP. 63.

A.D. 1862. *An Act to Amend "The Merchant Shipping Act, 1854," "The Merchant Shipping Amendment Act, 1855," and "The Customs Consolidation Act, 1853."* [29th July, 1862.]

WHEREAS it is expedient further to amend "The Merchant Shipping Act, 1854," "The Merchant Shipping Act Amendment Act, 1855,"

and "The Customs Consolidation Act, 1853;" Be it enacted, as A.D. 1862, follows:

1. This Act may be cited as "The Merchant Shipping Act Amendment Act, 1862," and shall be construed with and as part of "The Merchant Shipping Act, 1854," hereinafter termed the Principal Act.

Enactments in Table (A) repealed.

2. The enactments described in Table (A) in the schedule to this Act shall be repealed as therein mentioned, except as to any liabilities incurred before such repeal.

REGISTRY AND MEASUREMENT OF TONNAGE (PART II. OF MERCHANT SHIPPING ACT, 1854).

Equities not excluded by Merchant Shipping Act.

3. It is hereby declared that the expression "beneficial interest," whenever used in the second part of the Principal Act, includes interests arising under contract and other equitable interests; and the intention of the said Act is that, without prejudice to the provisions contained in the said Act for preventing notice of trusts from being entered in the register book or received by the registrar, and without prejudice to the powers of disposition and of giving receipts conferred by the said Act on registered owners and mortgagees, and without prejudice to the provisions contained in the said Act relating to the exclusion of unqualified persons from the ownership of British ships, equities may be enforced against owners and mortgagees of ships in respect of their interest therein, in the same manner as equities may be enforced against them in respect of any other personal property. See secs. 37 (2),—38 (5),—39 (5),—100.

MASTERS AND SEAMEN (PART III. OF MERCHANT SHIPPING ACT, 1854).

Third Part of Act to apply to Fishing Boats, Lighthouse Vessels, and Pleasure Yachts, with Certain Exceptions.

13. The following vessels (that is to say):

- (1.) Registered sea-going ships exclusively employed in fishing on the coasts of the United Kingdom:
- (2.) Sea-going ships belonging to any of the three General Lighthouse Boards.
- (3.) Sea-going ships being pleasure yachts:

Shall be subject to the whole of the third part of the principal Act; except,—sections 136, 143, 145, 147, 149, 150, 151, 152, 153, 154, 155, 157, 158, 161, 162, 166, 170, 171, 231, 256, 279, 280, 281, 282, 283, 284, 285, 286, and 287.

Construction of Sect. 182 of Principal Act. Stipulations concerning Salvage.

It is hereby declared that the 182nd section of the Principal Act does not apply to the case of any stipulation made by the seamen belonging to any ship, which, according to the terms of the agreement, is to be employed on salvage service, with respect to the remuneration to be paid to them for salvage services to be rendered by such ship to any other ship or ships.

A.D. 1862. *Payment of Wages to Seamen abroad under Sect. 209 of Principal Act.*

19. The payment of seamen's wages required by the 209th section of the Principal Act shall, whenever it is practicable so to do, be made in money and not by bill; and in cases where payment is made by bill drawn by the master, the owner of the ship shall be liable to pay the amount for which the same is drawn to the holder or endorsee thereof; and it shall not be necessary in any proceeding against the owner upon such bill to prove that the master had authority to draw the same; and any bill purporting to be drawn in pursuance of the said section, and to be endorsed as therein required, if produced out of the custody of the Board of Trade or of the registrar-general of seamen, or of any superintendent of any mercantile marine office, shall be received in evidence; and any indorsement on any such bill purporting to be made in pursuance of the said section, and to be signed by one of the functionaries therein mentioned, shall also be received in evidence, and shall be deemed to be *prima facie* evidence of the facts stated in such indorsement.

Wages and Effects of Deceased Seamen.

20. The 197th section of the Principal Act shall extend to seamen or apprentices who, within the six months immediately preceding their death, have belonged to a British ship; and such section shall be construed as if there were inserted in the first line thereof after the words "such seaman or apprentice as last aforesaid" the words "or if any seaman or apprentice who has, within the six months immediately preceding his death, belonged to a British ship."

Recovery of Wages, &c., of Seamen lost with their Ship.

21. The wages of seamen or apprentices who are lost with the ship to which they belong shall be dealt with as follows (that is to say):

- (1.) The Board of Trade may recover the same from the owner of the ship in the same manner in which seamen's wages are recoverable:
- (2.) In any proceedings for the recovery of such wages, if it is shown by some official return produced out of the custody of the registrar-general of seamen, or by other evidence, that the ship has twelve months or upwards before the institution of the proceeding left a port of departure, and if it is not shown that she has been heard of within twelve months after such departure, she shall be deemed to have been lost with all hands on board, either immediately after the time she was last heard of, or at such later time as the court hearing the case may think probable:
- (3.) The production out of the custody of the registrar-general of seamen, or of the Board of Trade, of any duplicate agreement or list of the crew made out at the time of the last departure of the ship from the United Kingdom, or of a certificate purporting to be a certificate from a consular or other public officer at any port abroad, stating that certain seamen or apprentices were shipped in the ship from the said port shall, in the absence of proof to the contrary, be sufficient proof that the seamen or apprentices therein named, were on board at the time of the loss:

- (4.) The Board of Trade shall deal with such wages in the A.D. 1862. manner in which they deal with wages of other deceased seamen and apprentices, under the Principal Act.

SAFETY (PART IV. OF MERCHANT SHIPPING ACT, 1854).

Enactment of Regulations concerning Lights, Fog Signals, and Sailing Rules in Schedule, Table C.

25. On and after the 1st day of June, one thousand eight hundred and sixty-three, or such later day as may be fixed for the purpose by Order in Council, the regulations contained in the table marked C in the schedule hereto shall come into operation and be of the same force as if they were enacted in the body of this Act; but her Majesty may from time to time, on the joint recommendation of the Admiralty and the Board of Trade, by Order in Council, annul or modify any of the said regulations, or make new regulations in addition thereto or in substitution therefor; and any alterations in or additions to such regulations made in manner aforesaid shall be of the same force as the regulations in the said schedule.

Regulations to be Published.

25. The Board of Trade shall cause the said regulations, and any alterations therein or additions thereto hereafter to be made, to be printed, and shall furnish a copy thereof to any owner or master of a ship who applies for the same; and production of the "Gazette" in which any Order in Council containing such regulations or any alterations therein or additions thereto is published, or of a copy of such regulations, alterations, or additions, signed or purporting to be signed by one of the secretaries or assistant secretaries of the Board of Trade, or sealed or purporting to be sealed with the seal of the Board of Trade, shall be sufficient evidence of the due making and purport of such regulations, alterations, or additions.

Owners and Masters bound to Obey them.

27. All owners and masters of ships shall be bound to take notice of all such regulations as aforesaid, and shall, so long as the same continue in force, be bound to obey them, and to carry and exhibit no other lights, and to use no other fog signals than such as are required by the said regulations; and in case of wilful default, the master or the owner of the ship, if it appear that he was in such fault, shall, for each occasion upon which such regulations are infringed, be deemed to be guilty of a misdemeanour.

Breaches of Regulations to imply wilful Default of Person in charge.

28. In case any damage to person or property arises from the non-observance by any ship of any regulation made by or in pursuance of this Act, such damage shall be deemed to have been occasioned by the wilful default of the person in charge of the deck of such ship at the time, unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the regulation necessary.

Rules for Harbours under Local Acts to continue in force.

31. Any rules concerning the lights or signals to be carried by

A.D. 1862. vessels navigating the waters of any harbour, river, or other inland navigation, or concerning the steps for avoiding collision to be taken by such vessels, which have been or are hereafter made by or under the authority of any local act, shall continue and be of full force and effect notwithstanding anything in this Act or in the schedule thereto contained.

Powers of Consignees to retain Light Dues paid by them.

46. Every consignee and agent (not being the owner or master) hereby made liable for the payment of light dues in respect of any ship may, out of any moneys in his hands received on account of such ship, or belonging to the owner thereof, retain the amount of all dues so paid by him, together with any reasonable expenses he may have incurred by reason of such payment or liability.

Construction of Section 431 of Principal Act.

48. The 431st section of the Principal Act shall be read as if after the word "ships" there were inserted the words "and boats."

WRECK AND SALVAGE (PART VIII. OF MERCHANT SHIPPING ACT, 1854).

Extension and Amendment of Summary Jurisdiction in Small Salvage Cases.

49. The provisions contained in the eighth part of the Principal Act for giving summary jurisdiction to two justices in salvage cases, and for preventing unnecessary appeals and litigation in such cases, shall be amended as follows; (that is to say,)

- (1.) Such provisions shall extend to all cases in which the value of the property saved does not exceed one thousand pounds, as well as to the cases provided for by the principal Act :
- (2.) Such provisions shall be held to apply whether the salvage service has been rendered within the limits of the United Kingdom or not :
- (3.) It shall be lawful for one of her Majesty's principal secretaries of state, or in Ireland for the Lord Lieutenant or other chief governor or governors, to appoint out of the justices for any borough or county a rota of justices by whom jurisdiction in salvage cases shall be exercised :
- (4.) When no such rota is appointed, it shall be lawful for the salvors, by writing addressed to the justices' clerk, to name one justice, and for the owner of the property saved in like manner to name the other :
- (5.) If either party fails to name a justice within a reasonable time, the case may be tried by two or more justices at petty sessions :
- (6.) It shall be competent for any stipendiary magistrate, and also in England for any county court judge, in Scotland for the sheriff or sheriff-substitute of any county, and in Ireland for the recorder of any borough in which there is a recorder, or for the chairman of quarter sessions in any county, to exercise the same jurisdiction in salvage cases as is given to two justices :
- (7.) It shall be lawful for one of her Majesty's principal secre-

ties of state to determine a scale of costs to be awarded in salvage cases by any such justices or court as aforesaid : A.D. 1862.

- (8.) All the provisions of the Principal Act relating to summary proceedings in salvage cases, and to the prevention of unnecessary appeals in such cases, shall, except so far as the same are altered by this Act, extend and apply to all such proceedings, whether under the Principal Act or this Act, or both of such Acts.

Receiver may appoint a Valuer in Salvage Cases.

50. Whenever any salvage question arises, the receiver of wreck for the district may, upon application from either of the parties, appoint a valuer to value the property in respect of which the salvage claim is made, and shall, when the valuation has been returned to him, give a copy of the valuation to both parties; and any copy of such valuation, purporting to be signed by the valuer, and to be attested by the receiver, shall be received in evidence in any subsequent proceeding; and there shall be paid in respect of such valuation, by the party applying for the same, such fee as the Board of Trade may direct.

Delivery of Wreck by Receiver not to prejudice Title.

52. Upon delivery of wreck or of the proceeds of wreck by any receiver to any person in pursuance of the provisions of the eighth part of the Principal Act such receiver shall be discharged from all liability in respect thereof, but such delivery shall not be deemed to prejudice or affect any question concerning the right or title to the said wreck which may be raised by third parties, nor shall any such delivery prejudice or affect any question concerning the title to the soil on which the wreck may have been found.

LIABILITY OF SHIPOWNERS (PART IX. OF MERCHANT SHIPPING ACT, 1854).

Shipowners' Liability Limited.

54. The owners of any ship, whether British or foreign, shall not, in cases where all or any of the following events occur without their actual fault or privity; (that is to say,)

- (1.) Where any loss of life or personal injury is caused to any person being carried in such ship;
- (2.) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board any such ship;
- (3.) Where any loss of life or personal injury is by reason of the improper navigation of such ship as aforesaid caused to any person carried in any other ship or boat;
- (4.) Where any loss or damage is by reason of the improper navigation of such ship as aforesaid caused to any other ship or boat, or to any goods, merchandise, or other things whatsoever on board any other ship or boat;

be answerable in damages in respect of loss of life or personal injury, either alone or together with loss or damage to ships, boats, goods, merchandise, or other things, to an aggregate amount exceeding fifteen pounds for each ton of their ship's tonnage; nor in respect of

A.D. 1862. loss or damage to ships, goods, merchandise, or other things, whether there be in addition loss of life or personal injury or not, to an aggregate amount exceeding eight pounds for each ton of the ship's tonnage; such tonnage to be the registered tonnage in the case of sailing ships, and in the case of steam ships the gross tonnage without deduction on account of engine room:

In the case of any foreign ship which has been or can be measured according to British law, the tonnage as ascertained by such measurement shall, for the purposes of this section, be deemed to be the tonnage of such ship:

In the case of any foreign ship which has not been and cannot be measured under British law, the surveyor-general of tonnage in the United Kingdom, and the chief measuring officer in any British possession abroad, shall, on receiving from or by direction of the Court hearing the case such evidence concerning the dimensions of the ship as it may be found practicable to furnish, give a certificate under his hand, stating what would in his opinion have been the tonnage of such ship if she had been duly measured according to British law, and the tonnage so stated in such certificate shall, for the purposes of this section, be deemed to be the tonnage of such ship.

Limitation of Invalidity of Insurances.

55. Insurances effected against any or all of the events enumerated in the section last preceding, and occurring without such actual fault or privity as therein mentioned, shall not be invalid by reason of the nature of the risk.

Proof of Passengers on board lost Ship.

56. In any proceeding under the 506th section of the Principal Act or any Act amending the same against the owner of any ship or share therein in respect of loss of life, the master's list or the duplicate list of passengers delivered to the proper officer of customs under the 16th section of "The Passengers Act, 1854," shall, in the absence of proof to the contrary, be sufficient proof that the persons in respect of whose death any such prosecution or proceeding is instituted were passengers on board such ship at the time of their deaths.

ARRANGEMENTS CONCERNING LIGHTS, SAILING RULES, SALVAGE AND MEASUREMENT OF TONNAGE IN THE CASE OF FOREIGN SHIPS.

Foreign Ships in British Jurisdiction to be subject to Regulations in Table (C) in Schedule.

57. Whenever foreign ships are within British jurisdiction, the regulations for preventing collision contained in Table (C) in the schedule to this Act, or such other regulations for preventing collisions as are for the time being in force under this Act, and all provisions of this Act relating to such regulations, or otherwise relating to collisions, shall apply to such foreign ships; and in any cases arising in any British Court of Justice concerning matters happening within British jurisdiction, foreign ships shall, so far as regards such regulations and provisions, be treated as if they were British ships.

Regulations, when adopted by a Foreign Country, may be applied to its Ships on the High Seas. **A.D. 1862.**

58. Whenever it is made to appear to her Majesty that the government of any foreign country is willing that the regulations for preventing collision contained in Table (C) in the schedule to this Act, or such other regulations for preventing collision as are for the time being in force under this Act, or any of the said regulations, or any provisions of this Act relating to collisions, should apply to the ships of this country when beyond the limits of British jurisdiction, her Majesty may, by order in council, direct that such regulations, and all provisions of this Act which relate to such regulations, and all such other provisions as aforesaid, shall apply to the ships of the said foreign country, whether within British jurisdiction or not.

Provision concerning Salvage of Life may, with the consent of any Foreign Country, be applied to its Ships on the High Seas.

59. Whenever it is made to appear to her Majesty that the government of any foreign country is willing that salvage shall be awarded by British Courts for services rendered in saving life from any ship belonging to such country when such ship is beyond the limits of British jurisdiction, her Majesty may by order in council direct that the provisions of the Principal Act and of this Act, with respect to salvage for service rendered in saving life from British ships, shall in all British Courts be held to apply to services rendered in saving life from the ships of such foreign country, whether such services are rendered within British jurisdiction or not.

Effect of Order in Council.

61. Whenever an order in council has been issued under this Act, applying any provision of this Act or any regulation made by or in pursuance of this Act to the ships of any foreign country, such ships shall in all cases arising in any British Court be deemed to be subject to such provision or regulation, and shall for the purpose of such provision or regulation be treated as if they were British ships.

LEGAL PROCEDURE.

20 & 21 Vict. c. 43, s. 3, not to apply to Proceedings under Board of Trade or this Act, &c.

65. Nothing in the third section of the Act passed in the twentieth and twenty-first years of the reign of her present Majesty, chapter forty-three, except so much thereof as provides for the payment of any fees that may be due to the clerk of the justices, shall be deemed to apply or extend to any proceeding under the direction of the Board of Trade, or under or by virtue of the provisions of the Principal Act or this Act, or any Act amending the same.

DELIVERY OF GOODS AND LIEN FOR FREIGHT.

Interpretation of Terms.

66. The following terms used in the sections of this Act hereinafter contained shall have the respective meanings hereby assigned to

A. D. 1862. them, if not inconsistent with the context or subject-matter ; (that is to say.)

- The word "report" shall mean the report required by the customs laws to be made by the master of any importing ship :
- The word "entry" shall mean the entry required by the customs laws to be made for the landing or discharging of goods from an importing ship :
- The word "goods" shall include every description of wares and merchandise :
- The word "wharf" shall include all wharves, quays, docks, and premises in or upon which any goods when landed from ships may be lawfully placed :
- The word "warehouse" shall include all warehouses, buildings, and premises in which goods when landed from ships may be lawfully placed :
- The expression "wharf owner" shall mean the occupier of any wharf, as hereinbefore defined :
- The expression "warehouse owner" shall mean the occupier of any warehouse, as hereinbefore defined :
- The word "shipowner" shall include the master of the ship and every other person authorized to act as agent for the owner, or entitled to receive the freight, demurrage, or other charges payable in respect of such ship :
- The expression "owner of goods" shall include every person who is for the time being entitled, either as owner or agent for the owner, to the possession of the goods, subject in the case of a lien, if any, to such lien.

Power to Shipowner to enter and land Goods in default of entry and landing by Owner of Goods.

67. Where the owner of any goods imported in any ship from foreign parts into the United Kingdom fails to make entry thereof, or having made entry thereof to land the same or take delivery thereof, and to proceed therewith with all convenient speed, by the times severally hereinafter mentioned, the shipowner may make entry of and land or unship the said goods at the times, in the manner, and subject to the conditions following ; (that is to say.)

- (1.) If a time for the delivery of the goods is expressed in the charter party, bill of lading, or agreement, then at any time after the time so expressed :
- (2.) If no time for the delivery of the goods is expressed in the charter party, bill of lading, or agreement, then at any time after the expiration of seventy-two hours, exclusive of a Sunday or holiday, after the report of the ship :
- (3.) If any wharf or warehouse is named in the charter party, bill of lading, or agreement, as the wharf or warehouse where the goods are to be placed, and if they can be conveniently there received, the shipowner in landing them by virtue of this enactment shall cause them to be placed on such wharf or in such warehouse :
- (4.) In other cases the shipowner in landing goods by virtue of this enactment shall place them in or on some wharf or warehouse on or in which goods of a like nature are usually

placed ; such wharf or warehouse being, if the goods are dutiable, a wharf or warehouse duly approved by the commissioners of customs for the landing of dutiable goods : A.D. 1862.

- (5.) If at any time before the goods are landed or unshipped the owner of the goods is ready and offers to land or take delivery of the same, he shall be allowed so to do, and his entry shall in such case be preferred to any entry which may have been made by the shipowner :
- (6.) If any goods are, for the purpose of convenience in assorting the same, landed at the wharf where the ship is discharged, and the owner of the goods at the time of such landing has made entry and is ready and offers to take delivery thereof, and to convey the same to some other wharf or warehouse, such goods shall be assorted at landing, and shall, if demanded, be delivered to the owner thereof within twenty-four hours after assortment ; and the expense of and consequent on such landing and assortment shall be borne by the shipowner ;
- (7.) If at any time before the goods are landed or unshipped the owner thereof has made entry for the landing and warehousing thereof at any particular wharf or warehouse other than that at which the ship is discharging, and has offered and been ready to take delivery thereof, and the shipowner has failed to make such delivery and has also failed at the time of such offer to give the owner of the goods correct information of the time at which such goods can be delivered, then the shipowner shall, before landing or unshipping such goods under the power hereby given to him, give to the owner of the goods or of such wharf or warehouse as last aforesaid twenty-four hours' notice in writing of his readiness to deliver the goods, and shall, if he lands or unships the same without such notice, do so at his own risk and expense.

If, when Goods are landed, the Shipowner give Notice for that Purpose, the Lien for Freight is to continue.

68. If, at the time when any goods are landed from any ship, and placed in the custody of any person as a wharf or warehouse owner, the shipowner gives to the wharf or warehouse owner notice in writing that the goods are to remain subject to a lien for freight or other charges payable to the shipowner to an amount to be mentioned in such notice, the goods so landed shall, in the hands of the wharf or warehouse owner, continue liable to the same lien, if any, for such charges as they were subject to before the landing thereof ; and the wharf or warehouse owner receiving such goods shall retain them until the lien is discharged as hereinafter mentioned, and shall, if he fail so to do, make good to the shipowner any loss thereby occasioned to him.

Lien to be discharged on Proof of Payment.

69. Upon the production to the wharf or warehouse owner of a receipt for the amount claimed as due, and delivery to the wharf or warehouse owner of a copy thereof or of a release of freight from the shipowner, the said lien shall be discharged.

A.D. 1863.

Lien to be Discharged on Deposit with Warehouse Owner.

70. The owner of the goods may deposit with the wharf or warehouse owner a sum of money equal in amount to the sum so claimed as aforesaid by the shipowner, and thereupon the lien shall be discharged; but without prejudice to any other remedy which the shipowner may have for the recovery of the freight.

Warehouse Owner may at the End of Fifteen Days, if no Notice is given, pay Deposit to Shipowner.

71. If such deposit as aforesaid is made with the wharf or warehouse owner, and the person making the same does not within fifteen days after making it give to the wharf or warehouse owner notice in writing to retain it, stating in such notice the sum, if any, which he admits to be payable to the shipowner, or, as the case may be, that he does not admit any sum to be so payable, the wharf or warehouse owner may at the expiration of such fifteen days pay the sum so deposited over to the shipowner, and shall by such payment be discharged from all liability in respect thereof.

Course to be taken if Notice to retain is given.

72. If such deposit as aforesaid is made with the wharf or warehouse owner, and the person making the same does within fifteen days after making it give to the wharf or warehouse owner such notice in writing as aforesaid, the wharf or warehouse owner shall immediately apprise the shipowner of such notice, and shall pay or tender to him out of the sum deposited the sum, if any, admitted by such notice to be payable, and shall retain the remainder or balance, or, if no sum is admitted to be payable, the whole of the sum deposited, for thirty days from the date of the said notice; and at the expiration of such thirty days, unless legal proceedings have in the meantime been instituted by the shipowner against the owner of the goods to recover the said balance or sum or otherwise for the settlement of any disputes which may have arisen between them concerning such freight or other charges as aforesaid, and notice in writing of such proceedings has been served on him, the wharf or warehouse owner shall pay the said balance or sum over to the owner of the goods, and shall by such payment be discharged from all liability in respect thereof.

After Ninety Days Warehouse Owner may sell Goods by Public Auction.

73. If the lien is not discharged, and no deposit is made as hereinbefore mentioned, the wharf or warehouse owner may, and, if required by the shipowner, shall, at the expiration of ninety days from the time when the goods were placed in his custody, or, if the goods are of a perishable nature, at such earlier period as he in his discretion thinks fit, sell by public auction, either for home use or exportation, the said goods or so much thereof as may be necessary to satisfy the charges hereinafter mentioned.

Notices of Sale to be given.

74. Before making such sale the wharf or warehouse owner shall give notice thereof by advertisement in two newspapers circulating in the neighbourhood, or in one daily newspaper published in London

and in one local newspaper, and also, if the address of the owner of the goods has been stated on the manifest of the cargo, or on any of the documents which have come into the possession of the wharf or warehouse owner, or is otherwise known to him, give notice of the sale to the owner of the goods by letter sent by the post; but the title of a *bond fide* purchaser of such goods shall not be invalidated by reason of the admission to send notice as hereinafter mentioned, nor shall any such purchaser be bound to inquire whether such notice has been sent.

Moneys arising from Sale how to be applied.

75. In every case of any such sale as aforesaid the wharf or warehouse owner shall apply the moneys received from the sale as follows, and in the following order :

- (1.) If the goods are sold for home use in payment of any customs or excise duties owing in respect thereof :
- (2.) In payment of the expenses of the sale :
- (3.) In the absence of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their respective charges, in payment of the rent, rates, and other charges due to the wharf or warehouse owner in respect of the said goods :
- (4.) In payment of the amount claimed by the shipowner as due for freight or other charges in respect of the said goods :
- (5.) But in case of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their respective charges, then such charges shall have priority according to the terms of such agreement :

And the surplus, if any, shall be paid to the owner of the goods.

Warehouse Owner's Rent and Expenses.

76. Whenever goods are placed in the custody of a wharf or warehouse owner under the authority of this Act, the said wharf or warehouse owner shall be entitled to rent in respect of the same, and shall also have power from time to time, at the expense of the owner of the goods, to do all such reasonable acts as in the judgment of the said wharf or warehouse owner are necessary for the proper custody and preservation of the said goods, and shall have a lien on the said goods for the said rent and expenses.

Warehouse Owner's Protection.

77. Nothing in this Act contained shall compel any wharf or warehouse owner to take charge of any goods which he would not be liable to take charge of if this Act had not passed; nor shall he be bound to see to the validity of any lien claimed by any shipowner under this Act.

Saving Powers under Local Acts.

78. Nothing in this Act contained shall take away or abridge any powers given by any local Act to any harbour trust, body corporate, or persons whereby they are enabled to expedite the discharge of ships or the landing or delivery of goods; nor shall anything in this Act contained take away or diminish any rights or remedies given to any shipowner or wharf or warehouse owner by any local Act.

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SCHEDULE REFERRED TO IN ACT.

TABLE (A). (Sect. 2.)
ENACTMENTS TO BE REPEALED.

To Act.	Title of Act.	Extent of Repeal.
8 & 9 Vict. c. 91. . .	An Act for the Warehousing of Goods.	Section 51 to be repealed immediately on the passing of this Act.
16 & 17 Vict. c. 107. .	Customs Consolidation Act, 1853.	The last proviso in section 74, and sections 170, 171, and 172, to be repealed immediately on the passing of this Act.
17 & 18 Vict. c. 104. .	Merchant Shipping Act, 1854.	Sections 295, 296, 297, 298, 299, to be repealed from the date at which the Regulations contained in Table (C.) in this schedule come into operation. Sections 300, 322, 323, 504, and 505 to be repealed immediately on the passing of this Act.
19 & 20 Vict. c. 75. .	An Act for the further Alteration and Amendment of the Laws and Duties of Customs.	Section 8 to be repealed immediately on the passing of this Act.

A.D. 1867. AN ACT TO AMEND THE MERCHANT SHIPPING ACT, 1854.

30 & 31 VICT. CAP. 124.

[20th August, 1867.]

Short Title.

1. This Act may be cited as the Merchant Shipping Act, 1867, and shall be construed with and as part of the Merchant Shipping Act, 1854, hereinafter termed the Principal Act.

Forfeiture of Wages, &c., of Seaman when Illness caused by his own Default.

8. Where a seaman is by reason of illness incapable of performing his duty, and it is proved that such illness has been caused by his own wilful act or default, he shall not be entitled to wages for the time during which he is by reason of such illness incapable of performing his duty.

A.D. 1873.

AN ACT TO AMEND THE MERCHANT SHIPPING ACTS.

36 & 37 VICT. CAP. 85.

1. This Act may be cited as The Merchant Shipping Act, 1873.

7. Any agreement with a seaman made under sect. 149 of The Merchant Shipping Act, 1854, may, instead of stating the nature and duration of the intended voyage or engagement, as by that section required, state the maximum period of the voyage or engagement, and the places or parts of the world (if any) to which the voyage or engagement is not to extend.

8. The owner or master of any British vessel engaged in fishing off the coast of the United Kingdom, may enter into an agreement with any person employed on such vessel, that such person shall be remunerated wholly by a share in the profit of the fishing adventure.

Every such agreement shall be in writing or in print, or partly in writing and partly in print, and shall be signed by the contracting parties in the presence of a superintendent or deputy-superintendent of a mercantile marine office.

The superintendent or deputy-superintendent shall, before such agreement is signed, read and (if necessary) explain the same to the contracting parties, and shall attest the signature of the agreement and certify that it has been read to and agreed to by the contracting parties. Any such agreement, if made in the manner by this section required, shall be valid and binding on all the contracting parties, notwithstanding anything contained in section 182 of the Merchant Shipping Act, 1854.

9. If a seaman or apprentice belonging to any ship is detained on a charge of desertion or any kindred offence, and, if upon a survey of the ship being made under section 7 of the Merchant Shipping Act, 1871, it is proved that she is not in a fit condition to proceed to sea, or that her accommodation is insufficient, the owner or master of the ship shall be liable to pay to such seaman or apprentice such compensation for his detention, as the Court having cognisance of the proceedings may award.

16. In every case of collision between two vessels, it shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew, and passengers (if any) to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew, and passengers (if any) such assistance as may be practicable, and as may be necessary in order to save them from any damage caused by the collision; and also to give to the master or person in charge of the other vessel the name of his own vessel and of her port of registry, or of the port or place to which she belongs, and also the names of the ports or places from which and to which she is bound.

If he fails so to do and no reasonable cause for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to be caused by his wrongful act, neglect or default.

17. If, in any case of collision, it is proved to the Court before which the case is tried that any of the regulations for preventing collision, contained in or made under the Merchant Shipping Acts, 1854 to 1873, have been infringed, the ship by which such regulation

A.D. 1873. has been infringed shall be deemed to be in fault, unless it is shown to the satisfaction of the Court that the circumstances of the case made departure from the regulation necessary.

18. The signals specified in the first schedule to this Act shall be deemed to be signals of distress.

Any master of a vessel who uses or displays or causes or permits any person under his authority to use or display any of the said signals, except in the case of a vessel being in distress, shall be liable to pay compensation for any labour undertaken, risk incurred, or loss sustained, in consequence of such signal having been supposed to be a signal of distress, and such compensation may without prejudice to any other remedy be recovered in the same manner in which salvage is recoverable.

19. If a vessel requires the services of a pilot the signals to be used and displayed shall be those specified in the second schedule to this Act.

Any master of a vessel who uses or displays, or causes or permits any person under his authority to use or display any of the said signals for any other purpose than that of summoning a pilot, shall incur a penalty not exceeding twenty pounds.

26. Where any dangerous goods, as defined in this Act (a), or any goods which, in the judgment of the master or owner of the vessel, are of a dangerous nature, have been sent or brought aboard any vessel British or foreign, without being marked as aforesaid, the master or the owner of the vessel may cause such goods to be thrown overboard, together with any package or receptacle in which they are contained; and neither the master nor the owner of the vessel shall, in respect of such throwing overboard, be subject to any liability, civil or criminal in any Court.

A.D. 1876.

MERCHANT SHIPPING ACT, 1876.

39 & 40 VICT. CAP. 80.

Ships' managing owner or manager to be registered.

36. The name and address of the managing owner for the time being of every British ship registered at any port or place in the United Kingdom shall be registered at the custom house of the ship's port of registry.

Where there is not a managing owner there shall be so registered the name of the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner; and any person whose name is so registered shall, for the purposes of the Merchant Shipping Acts, 1854 to 1876, be under the same obligations and subject to the same liabilities as if he were the managing owner.

(a) Aquafortis, vitriol, naphtha, benzine, gunpowder, lucifer matches, nitro-glycerine, petroleum. §. 23.

APPENDIX II.

ORDERS AS TO COSTS AND FEES.

PART I.

COSTS.

ADDITIONAL RULES OF COURT UNDER THE SUPREME A.D. 1875. COURT OF JUDICATURE ACT, 1875.

ORDER VI.

The following regulations as to costs of proceedings in the *Costs.*
Supreme Court of Judicature shall regulate such costs from the commencement of the Supreme Court of Judicature Act, 1873 and 1875:—

1. Solicitors shall be entitled to charge and be allowed the fees set forth in the column headed "lower scale" in the schedule hereto—

In all causes and matters by the 34th section of the said Act assigned to the Probate, Divorce, and Admiralty Division of the Court.

3. Notwithstanding these rules the Court or Judge may in any case direct the fees set forth in either of the said two columns to be allowed to all or either or any of the parties, and as to all or any part of the costs.

REGULÆ GENERALES,

[*3rd April, 1876.*]

ADMIRALTY DIVISION.

The fees on the higher scale are to be allowed in actions for salvage when 1000*l.* or upwards is awarded.

In actions for damage by collision to plaintiffs when 1000*l.* or upwards is recovered, exclusive of interest.

To defendants when 2000*l.* or upwards is claimed by the plaintiffs.

But in any case in which the fees on the higher scale are sanctioned, the taxing officer is to exercise a discretion as to the extent to which those under the heads appearances, instructions, perusals, and attendances are to be allowed.

A.D. 1875.

THE SCHEDULE ABOVE REFERRED TO (a).

An order or rule herein referred to by number shall mean the order or rule so numbered in the first schedule to the Supreme Court of Judicature Act, 1875.

WRITS, SUMMONSES, AND WARRANTS.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Writ of summons for the commencement of any action	0	6	8	0	13	4
And for endorsement of claim, if special	0	5	0	0	5	0
Concurrent writ of summons	0	6	8	0	6	8
Renewal of a writ of summons	0	6	8	0	6	8
Notice of a writ for service in lieu of writ out of jurisdiction	0	4	0	0	5	0
Writ of inquiry	1	1	0	1	1	0
Or per folio	0	1	4	0	1	4
Writ of subpoena ad testificandum duces tecum	0	6	8	0	6	8
And if more than four folios, for each folio beyond four	0	1	4	0	1	4
Writ or writs of subpoena ad testificandum for any number of persons not exceeding three, and the same for every additional number not exceeding three	0	6	8	0	6	8
Writ of execution, or other writ to enforce any judgment or order	0	7	0	0	10	0
And if more than four folios, for each folio beyond four	0	1	4	0	1	4
Procuring a writ of execution or notice to the sheriff, marked with a seal of renewal	0	6	8	0	6	8
Notice thereof to serve on sheriff	0	4	0	0	5	0
Any writ not included in the above	0	7	0	0	10	0
These fees include all endorsements and copies, or præcipes, for the officer sealing them, and attendances to issue or seal, but not the court fees.						
Summons to attend at Judges' chambers	0	3	0	0	6	8
Or if special, at taxing officer's discretion, not exceeding	0	6	8	1	1	0
Copy for the Judge, when required	0	2	0	0	2	0
Or per folio	—	—	—	0	0	4

SERVICES, NOTICES, AND DEMANDS.

Service of any writ, summons, warrant, interrogatories, petition, order, notice, or demand on a party who has not entered an appearance, and if not authorized to be served by post	0	5	0	0	5	0
If served at a distance of more than two miles from the nearest place of business or office of the solicitor serving the same, for each mile beyond such two miles therefrom	0	1	0	0	1	0

(a) For precedents of Bills of Costs, see post, Appendix VII.

	Lower Scale.			Higher Scale.			A.D. 1875
	£	s.	d.	£	s.	d.	
Where in consequence of the distance of the party to be served, it is proper to effect such service through an agent (other than the London agent), for correspondence in addition... ..	0	7	0	0	7	0	
Where more than one attendance is necessary to effect service, or to ground an application for substituted service, such further allowance may be made as the taxing officer shall think fit.							
For service out of the jurisdiction such allowance is to be made as the taxing officer shall think fit.							
Service where an appearance has been entered on the solicitor or party	0	2	6	0	2	6	
Or if authorized to be served by post	0	1	6	0	1	6	
Where any writ, order, and notice, or any two of them, have to be served together, one fee only for service is to be allowed.							
In addition to the above fees, the following allowances are to be made :—							
As to writs, if exceeding two folios, for copy for service, per folio beyond such two	0	0	4	0	0	4	
As to summonses to attend at the Judges' chambers, for each copy to serve	0	1	0	0	2	0	
Or per folio	0	0	4	0	0	4	
For preparing or filling up for service in any other cause or matter, each notice to creditors to prove claims, and each notice that cheques may be received, specifying the amount to be received for principal and interest, and costs, if any	0	1	0	0	1	0	
For preparing notice to produce or admit, and one copy	0	5	0	0	7	6	
If special or necessarily long, such allowance as the taxing officer shall think proper, not exceeding per folio	0	0	8	0	1	4	
And for each copy beyond the first, such allowance as the taxing master shall think proper, not exceeding per folio	0	0	4	0	0	4	
For preparing notice of motion	0	2	0	0	5	0	
Or per folio	0	1	0	0	1	0	
Copy for service	0	1	0	0	1	0	
Or per folio	—			0	0	4	
For preparing any necessary or proper notice, not otherwise provided for, and demand	0	1	6	0	1	6	
Or if special, and necessarily exceeding three folios, for preparing same, for each folio beyond three	0	1	0	0	1	0	
And for each copy for service, per folio beyond such three	0	0	4	0	0	4	
Copies for service of interrogatories and petitions, and of orders with necessary notices (if any) to accompany, per folio	0	0	4	0	0	4	

A.D. 1875.

Lower Scale.	Higher Scale.
£ s. d.	£ s. d.

Except as otherwise provided, the allowances for service include copies for service.

Where notice of filing affidavits is required, only one notice is to be allowed for a set of affidavits filed, or which ought to be filed together.

Where any appointment is or ought to be adjourned, service of a notice of the adjournment, or next appointment, is not to be allowed.

APPEARANCES.

Entering any appearance	0 6 8	0 6 8
If entered at one time, for more than one person for every defendant beyond the first	0 1 0	0 2 0

INSTRUCTIONS.

To sue or defend	0 6 8	0 13 4
For statement of claim	0 13 4	2 2 0
For statement or further statement of defence	0 6 8	0 13 4
For counter-claim	0 6 8	0 13 4
For reply by plaintiff when defendant sets up a counter-claim	0 13 4	1 1 0
For reply or further reply in any other case by plaintiff or other person, with or without joinder of issue	0 6 8	0 13 4
For confession of defence	0 6 8	0 13 4
For joinder of issue without other matter and for demurrer	0 6 8	0 13 4
For special case, special petition, any other pleading (not being a summons), and interrogatories for examination of a party or witness	0 6 8	0 13 4
To amend any pleading	0 6 8	0 13 4
For affidavit in answer to interrogatories, and other special affidavits	0 6 8	0 6 8
To appeal	0 13 4	1 1 0
To add parties by order of Court or Judge ...	0 6 8	0 13 4
For counsel to advise on evidence when the evidence in chief is to be taken orally ...	0 6 8	0 6 8
Or not to exceed	0 13 4	1 1 0
For counsel to make any application to a Court or Judge where no other brief ...	0 6 8	0 10 0
For brief on motion for special injunction ...	0 13 4	1 1 0
For brief on hearing or trial of action upon notice of trial given, whether such trial be before a Judge or with or without a jury, or before an official or special referee, or on trial of an issue of fact before a Judge, commissioner, or referee, or on assessment of damages	1 1 0	2 2 0
For such brief, and for brief on the hearing of an appeal when witnesses are to be exa-		

Lower Scale. Higher Scale. A.D. 1875.
 £ s. d. £ s. d.

mined or cross-examined, such fee may be allowed as the taxing officer shall think fit, having regard to all the circumstances of the case, and to other allowances, if any, for attendances on witnesses and procuring evidence.

The fees for instructions for brief are not to apply to a hearing on further consideration.

D DRAWING PLEADINGS AND OTHER DOCUMENTS.

Statement of claim	...	...	...	0	10	0	1	1	0
Or per folio	...	...	...	0	1	0	0	1	0
Statement of defence	...	...	...	0	5	0	0	10	0
Or per folio	...	...	...	0	1	0	0	1	0
Statement of defence and counter-claim	...	...	...	0	5	0	1	1	0
Or per folio	...	...	...	0	1	0	0	1	0
Reply with or without joinder of issue, confession of defence, joinder of issue without other matter, demurrer, and any other pleading (not being a petition or summons) and amendments of any pleading	...	...	...	0	5	0	0	10	0
Or per folio	...	...	...	0	1	0	0	1	0
Particulars, breaches, and objections, when required, and one copy to deliver	...	...	...	0	5	0	0	6	8
Or such amount as the taxing officer shall think fit, not exceeding per folio	...	...	...	0	0	8	0	1	0
If more than one copy to be delivered, for each other copy, per folio	...	...	...	0	0	4	0	0	4
Special case, whether original or in action, affidavits in answer to interrogatories and other special affidavits, special petitions, and interrogatories, per folio	...	...	...	0	1	0	0	1	0
Brief, on trial or hearing of cause, issue of fact, assessment of damages, examination of witnesses, demurrer, special case and petition before a Court or Judge, sheriff, commissioner, referee, examiner, or officer of the Court, when necessary and proper in addition to pleadings, including necessary and proper observations, per folio	...	...	...	0	1	0	0	1	0
Brief on application to add parties...	...	...	...	0	6	8	0	10	0
Or per folio	...	...	...	0	1	0	0	1	0
Brief on further consideration, per sheet of 10 folios	...	...	...	0	6	8	0	6	8
Accounts, statements, and other documents for the Judges' chambers, when required, and fair copy to leave, per folio	...	...	...	0	0	8	0	1	4

A.D. 1878.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Advertisements to be signed by Judge's clerk, including attendance therefor ...	0	6	8	0	13	4
Bill of costs for taxation, including copy for the taxing officer ...	0	0	8	0	0	8

COPIES.

Of pleadings, briefs, and other documents where no other provision is made at per folio ...	0	0	4	0	0	4
Where, pursuant to rules of Court, any pleading, special case or petition of right, or evidence is printed, the solicitor of the party printing shall be allowed for a copy for the printer (except when made by the officer of the Court), at per folio ...	0	0	4	0	0	4
And for examining the proof print, at per folio ...	0	0	2	0	0	2
And for printing the amount actually and properly paid to the printer, not exceeding per folio ...	0	1	0	0	1	0
And in addition, for every 20 beyond the first 20 copies, at per folio ...	0	0	1	0	0	1
And where any part shall properly be printed in a foreign language, or as a fac-simile, or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof, such further allowance shall be made as the taxing officer shall think reasonable.						
These allowances include all attendances on the printer.						
The solicitor for a party entitled to take printed copies shall be allowed, for such number of copies as he shall necessarily or properly take, the amount he shall pay for them.						
In addition to the allowances for printing and taking printed copies there shall be allowed for such printed copies as may be necessary or proper for the following, but for no other purposes (videlicet):—						
Of any pleading for delivery to the opposite party, or filing in default of appearance ...						
Of any special case for filing ...						
Of any pleading, special case or petition of right, for the use of the Court or Judge ...						
Of any affidavit to be sworn to, in print ...						
And of any pleading, special case, petition of right, or evidence for the use of counsel in Court, and in country agency causes						

APPENDIX.

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	Lower Scale.			Higher Scale.			A.D. 1875.
	£	s.	d.	£	s.	d.	
when proper to be sent as a close copy for the use of the country solicitor, at per folio... ..	0	0	2	0	0	3	
Such additional allowances for printed copies for the Court or Judge, and for counsel, are not to be made where written copies have been made previously to printing, and are not in any case to be made more than once in the progress of the cause.							
Close copies, whether printed or written, are not to be allowed as of course, but the allowance is to depend on the propriety of making or sending the copies, which in each case is to be shown and considered by the taxing officer.							
Inserting amendments in a printed copy of any pleading, special case, or petition of right, when not reprinted ...	0	1	0	0	5	0	
Or per folio	0	0	4	0	0	4	
* 45. Collating any copy per folio (a) ...				0	0	2	

PERUSALS.

Of statement of complaint, statement of defence, reply, joinder of issue, demurrer, and other pleading (not being a petition or summons) by the solicitor of the party to whom the same are delivered	0	6	8	0	13	4	
Or per folio	—			0	0	4	
Of amendment of any such pleading in writing	0	6	8	0	6	8	
Or per folio	—			0	0	4	
If same reprinted	0	6	8	0	13	4	
Or per folio of amendment	—			0	0	4	
Of interrogatories to be answered by a party by his solicitor	0	6	8	0	13	4	
Or per folio	—			0	0	4	
Of special case by the solicitor of any party except the one by whom it is prepared ...	0	6	8	0	13	4	
Or per folio	—			0	0	4	
Of copy order to add parties, notice of defendant's claim against any person not a party to the action under Order XVI., Rule 18, and of defendant's statement of defence and counter-claim served on a person not a party under Order XXII., Rule 6, by the solicitor of the party served							

(a) Items marked with an asterisk are those fees made in pursuance of 3 & 4 Vict. c. 65, s. 19, and 17 & 18 Vict. c. 98, and confirmed by the Order in Council 1859, which are still in force.

A.D. 1875.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
therewith, and in these several cases the perusal of the plaintiff's statement of complaint is also to be allowed unless the solicitor has been previously allowed such perusal	0	6	8	0	13	4
Or per folio	—			0	0	4
Of notice to produce and notice to admit by the solicitor or the party served ...	0	6	8	0	13	4
Of affidavit in answer to interrogatories by the solicitor of the party interrogating, and of other special affidavits by the solicitor of the party against whom the same can be read, per folio	0	0	4	0	0	4

ATTENDANCES.

To obtain consent of next friend to sue in his name	0	6	8	0	13	4
To deliver or file any pleading not being a petition or summons) and a special case ...	0	3	4	0	6	8
To inspect, or produce for inspection, documents pursuant to a notice to admit ...	0	6	8	0	13	4
Or per hour	0	6	8	0	6	8
To examine and sign admissions	0	6	8	0	13	4
To inspect, or produce for inspection, documents referred to in any pleading or affidavit, pursuant to notice under Order XXXI. Rule 14	0	6	8	0	6	8
Or per hour	0	6	8	0	6	8
To obtain or give any necessary or proper consent	0	6	8	0	6	8
To obtain an appointment to examine witnesses	0	6	8	0	6	8
On examination of witnesses before any examiner, commissioner, officer, or other person	0	13	4	0	13	4
Or according to circumstances, not to exceed...	2	2	0	2	2	0
Or if without counsel, not to exceed	—			3	3	0
On deponents being sworn, or by a solicitor or his clerk to be sworn, to an affidavit in answer to interrogatories or other special affidavits	0	6	8	0	6	8
On a summons at Judges' chambers	0	6	8	0	6	8
Or according to circumstances not to exceed...	1	1	0	1	1	0
To file taxing masters' certificates, and get copy marked as an office copy	0	6	8	0	6	8
On counsel with brief or other papers—						
If counsel's fee one guinea	0	3	4	0	6	8
If more and under five guineas	0	6	8	0	6	8
If five guineas and under 20 guineas ...	0	6	8	0	13	4
If 20 guineas	0	13	4	1	1	0
If 40 guineas or more	—			2	2	0

	Lower Scale.			Higher Scale.			A.D. 1875.
	£	s.	d.	£	s.	d.	
On consultation or conference with counsel ...	0	13	4	0	13	4	
To enter or set down action, demurrer, special case, or appeal, for hearing or trial ...	0	6	8	0	6	8	
In Court on motion of course and on counsel and for order ...	0	10	0	0	13	4	
To present petition for order of course and for order ...	0	6	8	0	13	4	
In Court on every special motion, each day ...	0	6	8	0	13	4	
On same when heard each day ...	0	13	4	0	13	4	
Or according to circumstances ...	1	1	0	2	2	0	
On demurrer, special case, or special petition, or application adjourned from the Judges' chambers, when in the special paper for the day, or likely to be heard ...	0	6	8	0	10	0	
On same when heard ...	0	13	4	1	1	0	
Or according to circumstances, not to exceed...	1	1	0	2	2	0	
On hearing or trial of any cause or matter, or issue of fact, in London or Middlesex, or the town where the solicitor resides or carries on business, whether before a Judge with or without a jury, or commissioner, or referee, or on assessment of damages, when in the paper ...	0	10	0	0	10	0	
When heard or tried ...	0	13	4	1	1	0	
Or according to circumstances ...	2	2	0	2	2	0	
When not in London or Middlesex, nor in the town where the solicitor resides or carries on business, for each day (except Sundays) he is necessarily absent ...	2	2	0	3	3	0	
And expenses (besides actual reasonable travelling expenses) each day, including Sundays ...	1	1	0	1	1	0	
Or if the solicitor has to attend on more than one trial or assessment at the same time and place, in each case ...	1	1	0	1	11	6	
The expenses in such case to be rateably divided.							
To hear judgment when same adjourned ...	0	6	8	0	13	4	
Or according to circumstances ...	0	13	4	1	1	0	
To deliver papers (when required) for the use of a Judge prior to a hearing ...	0	6	8	0	6	8	
If more than one Judge ...	0	13	4	0	13	4	
On taxation of a bill of costs ...	0	6	8	0	6	8	
Or according to circumstances not to exceed ...	2	2	0	2	2	0	
To obtain or give an undertaking to appear...	0	6	8	0	6	8	
To present a special petition, and for same answered ...	0	6	8	0	6	8	
On printer to insert advertisement in Gazette ...	0	6	8	0	6	8	
On printer to insert same in other papers, each printer ...	—			0	6	8	
Or every two ...	0	6	8	—			

CATERAL LINE

For every term commencing on the day the sittings in London and Middlesex of the High Court of Justice commence, and ter-

	Lower Scale.			Higher Scale.			A.D. 1876.
	£	s.	d.	£	s.	d.	
minating on the day preceding the next such sittings, in which a proceeding in the cause or matter by or affecting the party, other than the issuing and serving the writ of summons, shall take place ...	0	15	0	0	15	0	
And further, in country agency causes or matters, for letters ...	0	6	0	0	6	0	
Where no proceeding in the cause or matter is taken which carries a term fee, a charge for letters may be allowed, if the circumstances require it.							
In addition to the above an allowance is to be made for the necessary expense of postages, carriage and transmission of documents.							

* COUNSEL'S CLERKS' FEES.

	£	s.	d.
Not to exceed as under :			
Upon a fee to counsel under 5 guineas ...	0	2	6
5 guineas and under 10 guineas ...	0	5	0
10 guineas and under 20 guineas ...	0	10	0
20 guineas and under 30 guineas ...	0	15	0
30 guineas and under 50 guineas ...	1	0	0
50 guineas and upwards, for every guinea paid ...	0	0	6
On consultations :			
Senior's clerk ...	0	7	6
Junior's clerk ...	0	2	6
On general retainer...	0	10	6
On common retainer ...	0	2	6
On conference ...	0	2	6

* WITNESSES' EXPENSES.

Allowance to witnesses, including their board and lodging, as between party and party :			
Common witnesses, as labourers, journeymen, sailors, &c., &c. :			
If required to come a distance not exceeding five miles, per diem ...			
	0	5	0
If a greater distance, per diem ...			
	0	7	6
Master tradesmen, yeomen, farmers, masters and mates of vessels, &c. :			
If required to come a distance not exceeding five miles, per diem ...			
	0	10	0
If a greater distance, per diem ...			
	0	15	0
Bankers, merchants, professional men, notaries, engineers and surveyors, auctioneers and accountants, &c., per diem, from ...	1	1	0
	to		
	3	3	0
Clerks to bankers, merchants, professional men and others :			
If required to come a distance not exceeding five miles, per diem ...			
	0	10	6

A.D. 1875.

If a greater distance, per diem	£	s.	d.
Esquires and gentlemen, per diem	1	1	0
Females according to station in life:	1	1	0
If required to come a distance not exceeding five miles, per diem, from	0	5	0
	to		
	0	10	
	0	7	6
If a greater distance, per diem, from	1	0	0

The travelling expenses of witnesses shall be allowed according to the sums reasonably and actually paid; but in no case shall there be an allowance for such expenses of more than 1s. per mile one way.

SPECIAL ALLOWANCES AND GENERAL PROVISIONS.

1. As to writs of summons requiring special indorsement, original special cases, pleadings and affidavits in answer to interrogatories, and other special affidavits, when the higher scale is applicable, the taxing officer may, in lieu of the allowances for instructions and preparing or drawing, make such allowance for work, labour, and expenses in or about the preparation of such documents as in his discretion he may think proper.

2. As to drawing any pleading or other document, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.

3. As to instructions to sue or defend, when the higher scale is applicable, if in consequence of the instructions being taken separately from more than three persons (not being co-partners) the taxing officer shall consider the fee above provided inadequate, he may make such further allowance as he shall in his discretion consider reasonable.

4. As to affidavits, when there are several deponents to be sworn, or it is necessary for the purpose of an affidavit being sworn to go to a distance, or to employ an agent, such reasonable allowance may be made as the taxing officer in his discretion may think fit.

5. The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the deponent to be sworn, include all attendances on the deponents to settle and read over.

6. As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service.

7. As to perusals the fees are not to apply where the same solicitor is for both parties.

8. As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed.

9. As to agency correspondence, in country agency causes and matters, if it be shown to the satisfaction of the taxing officer that such correspondence has been special and extensive, he is at liberty to make such special allowance in respect thereof as in his discretion he may think proper.

10. As to attendances at the Judges' chambers, where, from the length of the attendance, or from the difficulty of the case, the Judge

or master shall think the highest of the above fees an insufficient remuneration for the services performed, or where the preparation of the case or matter to lay it before the Judge or master in chambers, or on a summons, shall have required skill and labour for which no fee has been allowed, the Judge or master may allow such fee in lieu of the fee of £1 1s. above provided, not exceeding £2 2s. or where the higher scale is applicable £3 3s., or in proceedings to wind up a company £5 5s., as in his discretion he may think fit; and where the preparation of the case or matter to lay it before a Judge at chambers on a summons shall have required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore shall appear to the Judge to deserve higher remuneration than the ordinary fees, the Judge may allow to the solicitor, by a memorandum in writing expressly made for that purpose, and signed by the Judge, specifying distinctly the grounds of such allowance, such fee, not exceeding 10 guineas, as in his discretion he may think fit, instead of the above fees of £2 2s., £3 3s., and £5 5s.

11. As to attendances at the Judges' chambers, where by reason of the non-attendance of any party (and it is not considered expedient to proceed *ex parte*), or where by reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the Judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested.

12. A folio is to comprise 72 words, every figure comprised in a column being counted as one word.

13. Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing officer shall in his discretion think just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer shall in his discretion think proper to be settled by counsel, are to be allowed; but as to affidavits, a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time.

14. As to counsel attending at Judges' chambers, no costs thereof shall in any case be allowed, unless the Judge certifies it to be a proper case for counsel to attend.

15. As to the inspection of documents under Order XXXI., Rule 14, no allowance is to be made for any notice or inspection, unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for giving such notice and making such inspection.

16. As to taking copies or documents in possession of another party, or extracts therefrom, under rules of Court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may, by writing require, at the rate of 4d. per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof.

A.D. 1875. 31. Upon such application the taxing officer shall reconsider and -- review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof, and, if so required by either party, he shall state either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto.

32. Any party who may be dissatisfied with the certificate or allocatur of the taxing officer as to any item or part of an item which may have been objected to as aforesaid, may apply to a Judge at chambers for an order to review the taxation as to the same item or part of an item, and the Judge may thereupon make such order as to the Judge may seem just; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid.

33. Such application shall be heard and determined by the Judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received upon the hearing thereof, unless the Judge shall otherwise direct.

34. When a writ of summons for the commencement of an action shall be issued from a district, and when an action proceeds in a district registry, all fees and allowances, and rules and directions relating to costs, which would be applicable to such proceeding if the writ of summons were issued in London, and if the action proceeded in London, shall apply to such writ of summons issued from and other proceedings in the district registry.

PART II.

FEES.

ORDER AS TO COURT FEES UNDER THE SUPREME COURT OF JUDICATURE ACT, 1875.

[28th October, 1875.]

The Right Honorable Hugh MacCalmont Baron Cairns, Lord High Chancellor of Great Britain, by and with the advice and consent of the undersigned Judges of the Supreme Court, and with the concurrence of the Lords Commissioners of her Majesty's Treasury, doth hereby in pursuance and execution of the powers given by the Supreme Court of Judicature Act, 1875, and all other powers and authorities enabling him in this behalf, order and direct in manner following:—

I.

The fees and percentages contained in the schedule hereto are fixed and appointed to be, and shall be taken in the High Court of

Justice, and in the Court of Appeal, and in any Court to be created A.D. 1875. by any commission, and in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, and by any officer paid wholly or partly out of public moneys who is attached to any of those Courts or the Supreme Court, or any Judge of those Courts, or any of them; and the said fees and percentages shall be taken by stamps, except those taken in the district registries, which shall, until further order, be taken in money, and applied and accounted for in such manner as the Treasury may from time to time direct.

II.

The fees and percentages set forth in the column headed Lower Scale in the schedule hereto are to be taken and paid in all cases in which the Lower Scale of fees is to be charged and allowed to solicitors under the provisions of the Additional Rules of Court under the Supreme Court of Judicature Act, 1875, issued by Order in Council, dated the 12th day of August, 1875, and the fees and percentages set forth in the column headed Higher Scale in the schedule hereto are to be taken and paid in all other cases.

IV.

The provisions in this order shall not apply to or affect any of the matters following (that is to say):—

The existing fees and percentages in respect of any matter at the time of the passing of the Supreme Court of Judicature Act, 1875, within the jurisdiction of the Court of Probate, the Court for Divorce and Matrimonial Causes, or the Admiralty Court, or relating to any appeal from the Chief Judge in Bankruptcy, except so far as the procedure in any such matter, or the fees or percentages to be taken in respect thereof, is or are expressly varied by the schedule to the said Act, or by this order, or by any rules of Court made or to be made by Order in Council before the commencement of the said Act;

The existing fees and percentages directed to be taken or paid by any Act of Parliament, and in respect of which no fee or percentage is hereby provided.

V.

The existing rules and practice, applicable to proceedings by persons suing in formâ pauperis, shall continue and be applicable to proceedings to which this order relates.

VI.

Save as otherwise provided by this order all existing fees and percentages which may be taken in any of the Courts whose jurisdiction is, by the Judicature Acts, 1873 and 1875, transferred to the High Court of Justice or Court of Appeal, or in any office which is con-

A. D. 1875. nected with any of those Courts, or in which any business connected with any of those Courts is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any of those Courts, or the Supreme Court, or any Judge of those Courts, or any of them, shall be and are hereby abolished.

VII.

A folio is to comprise 72 words, every figure comprised in a column being counted as one word.

VIII.

The provisions of Order LXIII. in the first schedule to the Supreme Court of Judicature Act, 1875, shall apply to this order.

IX.

This order shall come into operation at the time of the commencement of the Supreme Court of Judicature Acts, 1873 and 1875.

Form of Certificate for paying Lower Scale of Court Fees above referred to.

(Title of cause or matter.)

I hereby certify that to the best of my judgment and belief the Lower Scale of Fees of Court is applicable to this case.

Dated, &c.

A. B.,
Solicitor for Plaintiff or Defendant.

THE SCHEDULE ABOVE REFERRED TO.

An Order or Rule herein referred to by number shall mean the Order or Rule so numbered in the First Schedule to the Supreme Court of Judicature Act, 1875.

[SUMMONSES, WRITS, COMMISSIONS, AND WARRANTS.]

				Lower Scale.			Higher Scale.		
				£	s.	d.	£	s.	d.
On sealing a writ of summons for commence-									
ment of an action	...	...	...	0	5	0	0	10	0

APPENDIX.

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	Lower Scale.			Higher Scale.			A.D. 1875.
	£	s.	d.	£	s.	d.	
On sealing a concurrent, renewed or amended writ of summons for commencement of an action	0	2	6	0	2	6	
On sealing a notice for service under Order XVI., Rule 18	0	2	6	0	2	6	
On sealing a writ of subpoena not exceeding three persons... ..	0	2	6	0	5	0	
On sealing every other writ	0	5	0	0	10	0	
On sealing or issuing any other summons or warrant	0	2	0	0	3	0	
On sealing or issuing a commission to take oaths or affidavits, in the Supreme Court	5	0	0	5	0	0	
Every other commission	1	0	0	1	0	0	
* On every præcipe (a)		0	5	0			
* 2. On every warrant or citation		0	10	0			
* 3. On every detainer		1	0	0			
* 4. On every release		0	10	0			
* 5. On every commission, monition, decree, requisition, attachment or other instrument for which a fee is not specially provided		1	0	0			

APPEARANCES.

On entering an appearance, for each person	0	2	0	0	2
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COPIES.

For a copy of a written deposition of a witness to enable a party to print the same, for each folio	0	0	4	0	0	4
For examining a written or printed copy, and marking same as an office copy, for each folio... ..	0	0	2	0	0	2
For making a copy and marking same as an office copy, for each folio	0	0	6	0	0	6
For a copy in a foreign language, the actual cost.						
For a copy of a plan, map, section, drawing, photograph, or diagram, the actual cost.						
For a printed copy of an order, not being an office or certified copy, for each folio ...	0	0	1	0	0	1
* 23. For every office copy of a document in the English language, per sheet not exceeding 10 folios, including the registrar's signature		0	5	0		

(a) The fees marked with an asterisk are those made in pursuance of 3 & 4 Vict. c. 65, s. 19, and 17 & 18 Vict. c. 78, confirmed by Order in Council, 29th November, 1859, so far as they are still in force.

A.D. 1875.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
* 24. If required to be collated in the registry, per sheet not exceeding 10 folios, in addition to the above				0	2	6
* 25. For office copies of papers in a foreign language, or of shorthand writers' or reporters' notes, or of abstracts or translations made in the registry, in addition to the above fees, the charges of the copyist, shorthand writer, reporter, or translator.						

ATTENDANCES.

On an application, with or without a subpoena, for any officer to attend as a witness, or to produce any record or document to be given in evidence (in addition to the reasonable expenses of the officer) for each day or part of a day he shall necessarily be absent from his office	1	0	0	1	0	0
The officer may require a deposit of stamps on account of any further fees, and a deposit of money on account of any further expenses which may probably become payable beyond the amount paid for fees and expenses on the application, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof on the application.						
The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amount so paid and deposited.						

OATHS, &c.

For taking an affidavit or an affirmation or attestation upon honour in lieu of an affidavit or a declaration, except for the purpose of receipt of dividends from the paymaster-general, for each person making the same	0	1	6	0	1	6
And in addition thereto for each exhibit therein referred to and required to be marked, whether annexed or not	0	1	0	0	1	0
* 18. On administering an oath, for each deponent				0	1	0

FILING.

On filing an affidavit with exhibits (if any) annexed, submission to arbitration, award bill of sale, warrant of attorney, cognovit,

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				Lower Scale.			Higher Scale.			A.D. 1875.
				£	s.	d.	£	s.	d.	
bail, satisfaction, piece, and writ of execution with return	...	...	...	0	2	0	0	2	0	
On filing a caveat	...	...	...	0	5	0	0	5	0	

CERTIFICATES.

For a certificate of appearance, or of a pleading affidavit, or proceeding having been entered, filed or taken, or of the negative thereof	...	...	...	0	1	0	0	0	4	
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SEARCHES AND INSPECTIONS.

On an application to search for an appearance or an affidavit, and inspecting the same	...	...	...	0	1	0	0	1	0	
On an application to search an index, and inspect a pleading, decree, order or other record, unless otherwise expressly provided for by any Act of Parliament or this Order, and to inspect documents deposited for safe custody or production pursuant to an order, for each hour or part of an hour occupied	...	...	...	0	2	6	0	2	6	
Not exceeding one day	...	...	...	0	10	0	0	10	0	

EXAMINATION OF WITNESSES.

For every witness sworn and examined by an examiner or other officer in his office, including oath, for each hour	...	...	...	0	10	0	0	10	0	
For an examination of witnesses by any such officer away from the office (in addition to reasonable travelling and other expenses), per day	...	...	...	3	0	0	3	0	0	
The officer may require a deposit of stamps on account of fees and a deposit of money on account of expenses, which may probably become payable beyond any amount paid for fees and expenses upon the examination, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof and deliver the same to the party making the deposit.										
The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amount so paid and deposited.										
These fees are not to apply to the examination of witnesses for the purpose of any inquiry, taxation of costs, or other proceeding before the officer.										
* 17. On the examination of any witness <i>vidæ voce</i> either in Court or before the registrar	...	...	...	0	10	0				

A.D. 1875.

HEARING.

		Lower Scale.			Higher Scale.		
		£	s.	d.	£	s.	d.
For entering or setting down, or re-entering or re-setting down an appeal to the Court of Appeal, or a cause for trial or hearing in any Court in London or Middlesex, or at any assizes, including a demurrer, special case, and petition of right, but not any other petition, nor a summons adjourned from chambers		2	0	0	2	0	0
For a certificate of an associate of the result of trial		1	0	0	1	0	0

JUDGMENTS, DECREES, AND ORDERS.

For drawing up and entering a judgment, or a decree or decretal order, whether on the original hearing of a cause or on further consideration, including a cause commenced by summons at chambers, and an order on the hearing of a special case or petition, and any order by the Court of Appeal	...	0	10	0	1	0	0
For drawing up and entering any other order, whether made in court or at chambers	...	0	3	0	0	5	0
For copy of a plan, map, section, drawing, photograph, or diagram, required to accompany any order, the actual cost.							

TAKING ACCOUNTS.

On taxing an account of a receiver, guardian, consignee, bailee, manager, provisional, official, or voluntary liquidator, or sequestrator, or of an executor, administrator, trustee, agent, solicitor, mortgagee, cotenant, co-partner, execution creditor, or other person liable to account, when the amount found to have been received without deducting any payment shall not exceed £200		0	2	0	0	2	0
Where such amount shall exceed £200 for every £50 or fraction of £50		0	0	6	0	0	6
In the case of any such receiver, guardian, consignee, bailee, manager, liquidator, sequestrator, or execution creditor, the fees shall, upon payment, be allowed in the account unless the Court or Judge shall otherwise direct, and in the case of taking the accounts of such other accounting parties the fees shall be paid by the party having the conduct of the order under which such account is taken, as part of his costs of the cause or matter (unless the Court or Judge shall otherwise direct), and in such case shall be taken upon the certificate of the result of any such account; but the fees shall be due and payable,							

APPENDIX.

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Lower Scale. Higher Scale. A.D. 1875.
 £ s. d. £ s. d.

although no certificate is required, on the account taken, or on such part thereof as may be taken, and the solicitor or party suing in person shall in such case cause the proper stamps (the amount thereof to be fixed by the officer) to be impressed on or affixed to the account.

The officer taking the account may require a deposit of stamps on account of fees before taking the account, not exceeding the fees on the full amount appearing by the account to have been received, and the officer or his clerk taking such deposit shall make a memorandum thereof on the account.

TAXATION OF COSTS.

For taxing a bill of costs where the amount allowed does not exceed £8 ...	0	2	0	0	4	0
Where the amount allowed exceeds £8, for every £2 allowed, or a fraction thereof ...	0	0	6	0	1	0

These fees, except where otherwise provided, shall be taken on signing the certificate or on the allowance of the bill of costs as taxed, but the fees shall be due and payable if no certificate or allocatur is required on the amount of the bill as taxed, or on the amount of such part thereof as may be taxed, and the solicitor or party suing in person shall in such case cause the proper stamps (the amount thereof to be fixed by the officer) to be impressed on or affixed to the bill of costs.

The taxing officer may require a deposit of stamps on account of fees before taxation not exceeding the fees on the full amount of the costs as submitted for taxation, and the officer or his clerk on taking such deposit shall make a memorandum thereof on the bill of costs.

For a certificate or allocatur of the result, not being a judgment ...	—	1	0	0
--	---	---	---	---

PETITIONS.

For answering a petition for hearing in Court, and setting down ...	0	5	0	1	0	0
For answering a non-attendable petition, not being a petition for an order of course ...	0	5	0	0	10	0
On a matter of course order, on a petition of right	0	10	0	0	10	0
On an order for a commission on a petition of right	1	0	0	1	0	0

REGISTER OF JUDGMENTS AND LIS PENDENS.

For registering a judgment or lis pendens, although more than one name may have to be registered ...	0	2	6	0	2	6
--	---	---	---	---	---	---

A.D. 1875.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
For re-registering same ...	0	1	0	0	1	0
For a search for each name ...	0	1	0	0	1	0
For a certificate of entry of satisfaction ...	0	1	0	0	1	0
For certificate of a judgment for registration in Ireland or Scotland under the Judgments Extension Act, 1868, including affidavit ...	0	2	0	0	2	0
On filing for registration a certificate issued out of Courts of Dublin or Court of Session in Scotland under the same Act, although more than one name may have to be registered under the same Act ...	0	7	0	0	7	0
On every certificate of the entry of a satisfaction under the same Act ...	0	1	0	0	1	0
For a search made in one or both of the registers of Irish and Scotch judgments, for each name ...	0	1	0	0	1	0

MISCELLANEOUS.

On an allowance of bye-laws or table of fees	1	0	0	1	0	0
On a fiat of a Judge ...	0	5	0	0	5	0
On signing an advertisement ...	—			1	0	0
Upon a reference to a Master of the Queen's Bench, Common Pleas, or Exchequer Divisions, or a District Registrar, for the purpose of any investigation or inquiry other than the taking of an account for which another fee is herein provided, for every hour or part of an hour the Master or Registrar is occupied ...	0	10	0	0	10	0
A deposit on account of fees before proceeding with such reference, or at any time during the course thereof, may be required, and a memorandum thereof, shall be delivered to the party making the deposit.						
On taking acknowledgment of a deed by a married woman ...	1	0	0	1	0	0
On taking a recognizance or bond ...	0	10	0	0	10	0
On taking bail, and taking same off the file and delivering ...	0	2	0	0	2	0
On a commitment ...	0	5	0	0	5	0
On an application to produce Judge's notes...	0	5	0	0	5	0
On examining and signing enrolments of decrees and orders ...	3	0	0	3	0	0

CAIRNS, C.
G. JESSEL.
COLERIDGE.
FITZROY KELLY.
W. M. JAMES.
GEORGE MELLISH.
G. BRAMWELL.
NATHAN LINDLEY.

We certify that this Order is made with the concurrence of the Commissioners of Her Majesty's Treasury.

MAHON.
ROW. WINN.

APPENDIX.

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	£	d.	A.D. 1875.
* 28. On a reference to the registrar ...	5	5	0
* 29. If the attendance of one or two merchants is required, to each merchant ...	5	5	0
* 30. In cases of great intricacy and large amount to the registrar and to each merchant	10	10	0
* 31. When the accounts to be investigated do not amount to 300ℓ., to the registrar and to each merchant, from ... }	2	2	0
		to	
	5	5	0
* 32. When the accounts to be investigated do not amount to 100ℓ., to the registrar and to each merchant, from ... }	1	1	0
		to	
	3	3	0
* 33. On drawing the report and schedule in cases in which the claim exceeds 100ℓ. ...	1	0	0
* 34. On drawing the report and schedule where the claim does not exceed 100ℓ. ...	0	10	0
* 36. On taxing any bill of costs, per sheet not exceeding 10 folios, if but one party attends the taxation ...	0	10	0
* 37. On a receivable order ...	0	2	6
* 38. On a receipt for money or for papers ...	0	2	6
* 39. On every order for payment of money out of the registry ...	0	5	0
* 40. Poundage on monies paid out of the registry in any cause, if the sum does not exceed 50ℓ. ...	0	5	0
* 41. Poundage on monies paid out of the registry in any cause, if it exceeds 50ℓ., but does not exceed 100ℓ. ...	0	10	0
* 42. Poundage on monies paid out of the registry, in any cause, if it exceeds 100ℓ., but does not exceed 200ℓ. ...	1	0	0
* 43. For every additional 100ℓ. ...	0	10	0
* 44. No poundage is payable on the transfer of money from the registry to the naval prize account, or on transmitting it to the Court of Appeal in pursuance of a monition.			
* 48. Attendance at the Bank to receive dividends, transfer, sell or purchase stock or exchequer bills, or convert bills of exchange for suitors ...	1	0	0
* 52. On filing a claim for repayment of the excess of wages paid to a substitute hired in the place of a volunteer into the royal navy, including copy sent to the Admiralty	0	10	0
* 53. On the opinion of the registrar objecting to the claim ...	0	10	0
* 54. On certificate ordering payment of amount due, including the copy to be sent to the accountant-general of the navy ...	0	10	0
* 55. On registering power of attorney for a Queen's ship generally, and copy thereof for Somerset House ...	1	10	0
* 56. On registering ditto specially ...	0	10	0
* 57. Poundage on monies paid to the naval			

A.D. 1875.

prize account, the same as on payment of monies out of the registry in causes.			
* 58. On taxing accounts in naval prize matters the same as on taxing bills in causes.			
* 59. On writing letters in regard to naval prize matters... ..	0	10	0
* 60. On letters patent to a Vice-Admiral, or Judge of a Vice-Admiralty Court, issued under seal of the Court, besides the stamp duty, if any	5	0	0
* 61. On letters patent to an advocate, registrar, or marshal of a Vice-Admiralty Court, besides the stamp duty, if any	2	10	0
* 62. On every appointment of a coroner	2	0	0
* 6. On every bail bond	0	7	6
* 7. On every affidavit of justification	0	2	6
* 11. On every notice of sale or notice of a proceeding in an action of possession	0	10	0
* 12. On every notice of motion including the entry of the Judge's order	0	10	0
* 15. On every notice to have a reference placed on the bill for hearing	0	10	0
* 16. On every writing for the attendance of Trinity masters at the hearing of any cause	0	10	0
* 21. On every proof, notice, agreement, or other document, on the same being filed, save an exhibit or other document, previously issued from the registry or the marshal's office	0	5	0
* 22. Exhibit including the marking thereof	0	1	0

IN THE MARSHAL'S OFFICE.

* 64. On the execution of every warrant	2	0	0
* 65. On the execution of every citation in rem	0	10	0
* 66. On the execution of every attachment for every person attached	1	0	0
* 67. On the execution of every decree or commission of unlivery, appraisement, or sale	1	0	0
* 68. On the execution of any other instrument for which a fee is not specially provided	1	0	0
* 69. On attending appointing and swearing appraisers	1	0	0
* 70. On delivering up ship or goods to the purchaser agreeably to the inventory	1	0	0
* 71. On attending the unlivery of the cargo or sale of ship or goods, per day	2	0	0
* 72. On retaining possession of a ship or of a ship and goods to include the cost of a shipkeeper, if required, per day	0	5	0

APPENDIX.

CXXXV

	£	s.	d.	A.D. 1875.
* 72a. On attending the removal of a ship, per day	2	0	0	
* 73. On every report as to the sufficiency of sureties	0	10	0	
* 74. If the marshal or any of his substitutes is required to go a greater distance than five miles from his office to perform any of the above duties he will be entitled to his reasonable expenses for travelling, board, and maintenance.				
* 75. Poundage on the proceeds of any vessel or goods sold under the decree of the Court if the same do not exceed 50%.				
* 76. Exceeding 50% but not exceeding 100%.	1	0	0	
* 77. For every additional 100%, or part thereof	1	0	0	

PART III.

FEES AND COSTS IN SALVAGE CASES HEARD IN A SUMMARY MANNER.

SCALE OF FEES AND COSTS ALLOWED IN PURSUANCE OF 25 & 26 VICT.
c. 63, s. 69.

Fees to Assessors and Umpires.

	£	s.	d.
To assessors, for each day's attendance and service in every case in which his assistance shall have been duly required	1	1	0
To an umpire, when duly appointed by justices under sect. 461 of 17 & 18 Vict. c. 104, for his service as such, for each day's employment	1	1	0
Provided the total sum allowed to such assessor and umpire respectively shall in no case exceed the sum stated in sect. 462 of 17 & 18 Vict. c. 104.			

Fees to be paid to the Clerks of Justices or Stipendiary Magistrates in England or Wales.

And if the above cases be heard by the Judge of a County
Court in England, a sheriff or his substitute in Scot-
land, or the recorder of a borough, or chairman of
quarter sessions in Ireland, to be paid to the registrar
or clerk of such Court or to any other person acting in
a like capacity.

Convening justices and assessors and umpire to hear a case of salvage, for each person convened	0	2	0
Notices to parties to the inquiry, of time of hearing a case	0	2	0

A.D. 1875.		£	s.	d.
	Summons and duplicate to each witness, if required ...	0	2	0
	To person serving a notice of summons ...	0	1	0
	Taking written examination of witnesses, per folio ...	0	0	8
	Copy of such evidence (if required), per folio ...	0	0	2
	Preparing award, per folio ...	0	0	8
	Fair copy of same, per folio ...	0	0	2
	Attending justices and if necessary also assessor and umpire, for their several signatures, a total sum of ...	0	5	0
	Writing letters specially directed to be written by the justices or umpire, each letter ...	0	2	0

Fees to Witnesses.

Seamen and others of same class for each day's full attendance ...	0	3	6
For any less time of attendance ...	0	2	0
Master mariners, pilots, engineers, and all other witnesses for each full day's attendance ...	0	5	0
For any less time of attendance ...	0	3	0

NOTE.—Travelling expenses, such as are fair and moderate and have been actually paid, to be allowed, but the same not to exceed 3*d.* per mile each way, in going to and returning from the place of meeting; and all witnesses attending before justices and Courts, whose usual place of abode is distant more than five miles from the place of meeting, and who may be necessarily detained there more than one day, to be allowed no greater sum for each night they may be so necessarily detained, than 0 1 0

Fees to Practitioners.

If any attorney be employed to conduct the inquiry, &c., he shall receive for each day's service ...	1	1	0
But no fee shall be paid to him for more than two days' attendance in any case.			

APPENDIX III.

MISCELLANEOUS ORDERS.

PART I.

A.D. 1875.

ORDER AS TO THE TAKING OF THE FEES AND PERCENTAGES IN THE SUPREME COURT OF JUDICATURE BY STAMPS, EXCEPT IN THE DISTRICT REGISTRIES.*

[28th October, 1875.]

WHEREAS, by Section 26 of the Supreme Court of Judicature Act Stamps. 1875, it is provided that the fees and percentages appointed to be taken in the High Court of Justice and in the Court of Appeal, and in any Court to be created by any commission, and in any office which is connected with any of those Courts or in which any business connected with any of those Courts is conducted, shall, except so far as they be otherwise directed, be taken by means of stamps; and further, that such stamps shall be impressed or adhesive, as the Treasury may from time to time direct; and that the Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for insuring the proper cancellation of such stamps.

Now, we, the undersigned, being two of the Lords Commissioners of Her Majesty's Treasury, do, with the concurrence of the Lord Chancellor, hereby give notice and order and direct—

1. That from and after the 1st November next, being the date fixed for the commencement of this Act, all orders and regulations now in force with respect to the use, proper cancellation, mode of keeping accounts, and allowance of fee stamps in—

The Admiralty Court, shall continue in force up to the beginning

* By order of October 24, 1877, fees are to be taken by stamps in the District Registries of Liverpool and Manchester, except in respect of proceeds of a sale of a ship, by order of the Admiralty Division.

A.D. 1875. of the sittings to take place after January next, or they shall respectively be altered or annulled by any rules hereafter to be made and published in conformity with the Act.

2. That the stamps to be used in the collection of fees and percentages payable under the order made in pursuance of the powers given by the Supreme Court of Judicature Act, 1875, bearing date this day, shall, until further notice, be either impressed or adhesive as directed in any previous order; and in cases to which no previous order is applicable, shall be either impressed or adhesive, at the option of the parties by whom the fees are payable.

3. That until we do order to the contrary, the dies heretofore in use for impressing stamps in any of the Courts affected by the said Act, and also the adhesive stamps heretofore in use, shall be available and valid for the taking of the said fees and percentages, and may be used notwithstanding that new dies and stamps appropriated to the Supreme Court of Judicature may in the meantime have been issued by the Commissioners of Inland Revenue, which will also be valid and available.

5. And that where any of such fees are payable in respect of any matter or thing to be done by any officer or in any office whatever of the Supreme Court of Judicature, and it shall not have been customary or may not be necessary to use any written or printed document or paper in reference to such matter or thing whereon the stamp could be stamped or affixed, the party or his solicitor requiring such matter or thing to be done shall make application for the same by a præcipe, or short note in writing or print, and a stamp denoting the amount of the fees so payable shall be stamped or affixed to such præcipe or note.

6. That where a fee is payable, but no directions are found in previous orders as to the document to which the stamp is to be applied, it shall be lawful, until we do otherwise order, for any officer of the Supreme Court whose duty it would be to see that the fee in question is duly paid by means of a stamp, to decide on what document such stamp shall be impressed or affixed.

Given under our hands,

MAHON.
ROW. WINN.

I hereby signify my concurrence in the before-mentioned rules and regulations.

CAIRNS, C.

A.D. 1875. ADDITIONAL RULES OF COURT UNDER THE SUPREME COURT OF JUDICATURE ACT, 1875.

[12th August, 1875.]

ORDER I.

As to printing depositions, &c.

Where any written deposition of a witness has been filed for use on a trial, such deposition shall be printed, unless otherwise ordered.

ORDER II.

A.D. 1875.

The rules of Court as to printing depositions and affidavits to be used on a trial shall not apply to depositions and affidavits which have previously been used upon any proceeding without having been printed.

ORDER III.

Other affidavits than that required to be printed by Order XXXVIII., Rule 6, in the schedule to the Supreme Court of Judicature Act, 1875, may be printed if all the parties interested consent thereto, or the Court or Judge so order.

ORDER IV.

The 3rd rule of the Order XXXIV., in the first schedule to the Supreme Court of Judicature Act, 1875, shall apply to a special case, pursuant to the Act of 13 & 14 Vict. c. 35.

ORDER V.

Where, pursuant to rules of Court, any pleading, special case, petition of right, deposition, or affidavit is to be printed, and where any printed or other office copy thereof is to be taken, the following regulations shall be observed :—

1. The party on whose behalf the deposition or affidavit is taken and filed is to print the same in the manner provided by Rule 2 of Order LVI. in the first schedule to the Supreme Court of Judicature Act, 1875.
2. To enable the party printing to print any deposition, the officer with whom it is filed shall, on demand, deliver to such party a copy written on draft paper on one side only.
3. The party printing shall, on demand in writing, furnish to any other party or his solicitor any number of printed copies, not exceeding ten, upon payment therefor at the rate of 1*d.* per folio for one copy, and $\frac{1}{2}$ *d.* per folio for every other copy.
4. The solicitor of the party printing shall give credit for the whole amount payable by any other party for printed copies.
5. The party entitled to be furnished with a print shall not be allowed any charge in respect of a written copy, unless the Court or Judge shall otherwise direct.
6. The party by or on whose behalf any deposition, affidavit, or certificate is filed, shall leave a copy with the officer with whom the same is filed, who shall examine it with the original and mark it as an office copy ; such copy shall be a copy printed as above provided where such deposition or affidavit is to be printed.
7. The party or solicitor who has taken any printed or written office copy of any deposition or affidavit is to produce the same upon every proceeding to which the same relates.
8. Where any party is entitled to a copy of any deposition, affidavit, proceeding, or document filed or prepared by or on behalf of another party, which is not required to be printed,

A.D. 1875.

- such copy shall be furnished by the party by or on whose behalf the same has been filed or prepared.
9. The party requiring any such copy, or his solicitor, is to make a written application to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges, and thereupon such copy is to be made and ready to be delivered at the expiration of twenty-four hours after the receipt of such request and undertaking or within such other time as the Court or Judge may in any case direct, and is to be furnished accordingly upon demand and payment of the proper charges.
 11. It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be printed on every printed copy of an affidavit or set of affidavits, and copied on every office copy and copy furnished to a party.
 12. The name and address of the party or solicitor by whom any copy is furnished is to be endorsed thereon in like manner as upon proceedings in Court, and such party or solicitor is to be answerable for the same being a true copy of the original, or of an office copy of the original, of which it purports to be a copy, as the case may be.
 13. The folios of all printed and written office copies, and copies delivered or furnished to a party, shall be numbered consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner on the same paper as in the case of printed copies.
 14. In case any party or solicitor who shall be required to furnish any such written copy as aforesaid shall either refuse or, for twenty-four hours from the time when the application for such copy has been made, neglect to furnish the same, the person by whom such application shall be made shall be at liberty to procure an office copy from the office in which the original shall have been filed, and in such case no costs shall be due or payable to the solicitor so making default in respect of the copy or copies so applied for.
 15. Where, by any Order of the Court (whether of appeal or otherwise) or a Judge, any pleading, evidence, or other document is ordered to be printed, the Court or Judge may order the expense of printing to be borne and allowed, and printed copies to be furnished by and to such parties and upon such terms as shall be thought fit.

A.D. 1875. ADDITIONAL RULES OF COURT UNDER THE SUPREME COURT OF JUDICATURE ACT 1875 (12TH DAY OF AUGUST, 1875)—continued.

District
Registrars.

WHEREAS by the Supreme Court of Judicature Act, 1873, it is enacted that it shall be lawful for her Majesty by Order in Council from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be

thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings may be taken and recorded as are hereinafter mentioned; and her Majesty may thereby appoint that any registrar of any County Court, or any registrar or prothonotary or district prothonotary of any local Court whose jurisdiction is hereby transferred to the said High Court of Justice, or from which an appeal is hereby given to the said Court of Appeal, or any person who, having been a district registrar of the Court of Probate, or of the Admiralty Court, shall under this Act become and be a district registrar of the said High Court of Justice, or who shall hereafter be appointed such district registrar, shall and may be a district registrar of the said High Court for the purpose of issuing such writs as aforesaid, and having such proceedings taken before him as are hereinafter mentioned.

A.D. 1875.

And whereas by "The Supreme Court of Judicature Act, 1875," it is provided that where any such order has been made, two persons may, if required, be appointed to perform the duties of district registrar in any district named in the order, and such persons shall be deemed to be joint district registrars, and shall perform the said duties in such manner as may from time to time be directed by the said order or any Order in Council amending the same.

And whereas it has seemed fit to her Majesty, by and with the advice of her Privy Council, that there should be district registrars in certain places in England: Now, therefore, her Majesty, by and with the advice aforesaid, is pleased to order, and it is hereby ordered as follows:—

That there shall be district registrars in the places of Liverpool, Manchester, and Preston, and the district registrar at Liverpool of the High Court of Admiralty, and the district prothonotary at Liverpool of the Court of Common Pleas at Lancaster, shall be and are hereby appointed the district registrars in Liverpool; and the district prothonotary at Manchester of the said Court of Common Pleas shall be and is hereby appointed the district registrar in Manchester; and the district prothonotary at Preston of the said Court of Common Pleas shall be and is hereby appointed the district registrar at Preston; and that the district for each such place shall be the district now assigned to each such district prothonotary, under the provisions and authority of "The Common Pleas at Lancaster Amendment Act, 1869."

That there shall be a district registrar in Durham, and that the district prothonotary of the Court of Pleas at Durham shall be and is hereby appointed the district registrar in Durham; and that the district shall be the district, for the time being, of the County Court holden at Durham.

That in the places mentioned in the schedule annexed, there shall be district registrars, and that the registrar of the County Court held in any such place shall be and is hereby appointed the district registrar in such place, and that the district for each such place shall be the district for the time being, of the County Court holden at such place.

C. L. PEEL

Bangor.
 Barnsley.
 Barnstaple.
 Bedford.
 Birkenhead.
 Birmingham.
 Boston.
 Bradford.
 Bridgewater.
 Brighton.
 Bristol.
 Bury St. Edmunds.
 Cambridge.
 Cardiff.
 Carlisle.
 Carmarthen.
 Cheltenham.
 Chester.
 Colchester.
 Derby.
 Dewsbury.
 Dorchester.
 Dover.
 Dudley.
 East Stonehouse.
 Exeter.
 Gloucester.
 Great Grimsby.
 Great Yarmouth.
 Halifax.
 Hanley.
 Hartlepool.
 Hereford.
 Huddersfield.
 Ipswich.

APPENDIX.

SCHEDULE.

Kingston-on-Hull.
 King's Lynn.
 Leeds.
 Leicester.
 Lincoln.
 Lowestoft.
 Maidstone.
 Newcastle-upon-Tyne.
 Newport, Monmouthshire.
 Newport, Isle of Wight.
 Newtown.
 Northampton.
 Norwich.
 Nottingham.
 Oxford.
 Pembroke Dock.
 Peterborough.
 Poole.
 Portsmouth.
 Ramsgate.
 Rochester.
 Sheffield.
 Shrewsbury.
 Southampton.
 Stockton-on-Tees.
 Sunderland.
 Swansea.
 Truro.
 Totnes.
 Wakefield.
 Walsall.
 Whitehaven.
 Wolverhampton.
 Worcester.
 York.

PART II.

THE CONSOLIDATED COUNTY COURT ORDERS AND A.D. 1875.
RULES, 1875, WITH FORMS AND SCALES OF COSTS ———
AND FEES.*

ORDER XIX.

1. Every order for the payment of money may be enforced in the same manner as a judgment for debt or damages is enforced under section 94 of the County Courts Act, 1846.

ORDER XXXIII.

ADMIRALTY ACTIONS.

Sittings of the Court.

1. The Judge may try or partly try the action at any place within the Admiralty district of the Court. Where action may be tried.

2. Where application is made to the Judge for the trial or part trial of an Admiralty action at a place in which a County Court does not sit, the solicitor shall file a præcipe undertaking to provide at his expense a place to the satisfaction of the Judge in which the action may be tried, and pay the necessary expenses of the Court and officers so attending. Undertaking by solicitor for expenses.

3. The days of the sitting of the Court shall be those appointed for the transaction of the ordinary general business of the County Court held in the city or town mentioned in the name of the Court, or such other days as the Judge may from time to time appoint for the trying of an Admiralty action where, from the detention of a vessel or otherwise, a prompt determination of the action is desirable. Sittings of the Court in Admiralty.

Institution of Action.

4. A solicitor desiring to commence an Admiralty action shall file a præcipe which shall state the nature of the action, the name, address, and description of the party in whose behalf it is instituted, the name of the solicitor, and an address within three miles of the court-house at which it shall be sufficient to leave all instruments and documents in the action required to be served upon him, and it shall also state the name of the owner or owners or other person against whom the action is instituted, or it shall state that the action is instituted against the vessel or other property to which the action relates. Commencement of action.

5. In an Admiralty action for wages against the owners of a foreign vessel, notice of the commencement of the action shall be given to the consul or vice-consul of the state to which the vessel belongs, if there be one resident within the district of the Court, and a copy of the notice shall be annexed to the præcipe. Notice of commencement of action to be given to Consul in certain cases.

* The orders are inserted only when they relate to Admiralty actions.

A.D. 1875.

Summons.

Summons.

6. Immediately upon the filing of the præcipe the registrar shall issue a summons for service by the solicitor, or if so required, by the bailiff of the Court.

Service of summons.

7. Where the vessel or property to which the action relates is within the district, the summons may be served by delivering it to the person who is at the time of service apparently in charge of the vessel or property, or, if there is no person in charge, by nailing it on the main mast or the single mast of the vessel; and in other cases the summons must be served personally upon the defendant, unless the Judge, or in his absence the registrar, shall upon facts duly verified upon affidavit allow of substituted service.

Appearance in Admiralty Actions.

Appearance.

8. A solicitor desiring to enter an appearance in an action shall file a præcipe, and thereupon an entry of his appearance shall be made in the Admiralty suits book.

Contents of præcipe.

9. The præcipe shall state the name, address, and description of the party on whose behalf the appearance is entered, the name of the solicitor, and an address within three miles of the court-house, at which it shall be sufficient to leave all instruments and documents in the action required to be served upon him.

Person claiming interest may intervene.

10. Any person claiming to have an interest in the vessel or property, whether cognizable by the Court or not, may intervene for the purpose of having the case transferred to the High Court of Justice.

Appearance on arrest.

11. Upon the arrest of any vessel or property an appearance may be entered the same as upon the service of the summons.

Notice of day of hearing.

12. Where an appearance has been entered the registrar shall upon application by either plaintiff's or defendant's solicitor give to each solicitor in the action, and where no appearance has been entered then to the plaintiff or his solicitor, a notice under the seal of the Court, stating the day upon which the action has been directed by the Judge to be heard.

Arrest.

Affidavit to be filed.

13. Where after the commencement of an Admiralty action, it is desired to arrest any vessel or property, the solicitor must file an affidavit stating the facts which render it probable that it will be removed out of the jurisdiction of the Court.

When nationality of vessel to be stated.

14. In an Admiralty action for necessities or for wages the national character of the vessel shall be stated in the affidavit.

When warrant for arrest may issue.

15. Where upon the filing of such affidavit the registrar, in the absence of the Judge, is satisfied with the evidence, he may issue a warrant for the arrest and detention of the vessel or property, and where he is not satisfied he may require further evidence to be adduced.

When warrant for arrest may be executed.

16. A warrant of arrest may be executed on Sunday, Good Friday, or Christmas Day, as well as on any other day.

Release of Property.

Release on payment into Court.

17. Where in an Admiralty action the amount sued for is paid into Court, together with costs, or the security completed, or where the plaintiff's solicitor usually requires it, the registrar shall deliver

to the solicitor an order directed to the high bailiff of the Court, **A.D. 1875.** authorizing and directing him, upon payment of all costs, charges, and expenses attending the custody of the property, to release it forthwith.

18. Notwithstanding the last preceding rule, the property, in an Admiralty action for salvage, shall not be released until its value has been ascertained either by affidavit, by agreement, or by appraisal, save by consent of the plaintiff or his solicitor. Release in salvage action.

Transfer of Action.

19. Where an action is transferred to the High Court of Justice by order thereof, the registrar of the Court, upon the service of the order of transfer, shall send by post the proceedings to the proper officer of such Court. Transmission of proceedings on transfer by High Court.

20. Where a Court orders the transfer of an action to the High Court of Justice or to another Court, the registrar shall send by post the order, together with the proceedings, to the registrar of the High Court of Justice or to the Court to which it is transferred. The like on transfer to High Court.

Second or Cross Action.

21. Where it shall appear to the Court that the plaintiff in an Admiralty action (hereafter called the second action), was or is the defendant in an action (hereafter called the first action) in another Court arising out of the same transaction, and that he did not propose to the plaintiff in the first action that by agreement jurisdiction should be given to the Court in which the first action was instituted, to hear and determine the second action, the Judge may refuse the plaintiff in the second action his costs if he shall think fit. Costs in cross action may be refused.

22. Where a second or cross action for damage has been instituted by a defendant in an action for damage, and the second action has been instituted, by agreement or otherwise, in the Court in which the first action was instituted, or has been transferred to the said Court by order of any other Court, the Court may direct that both actions may be tried at the same time and upon the same evidence. First and second actions may be tried together.

23. Where a judgment or order has been obtained against an unknown defendant, the vessel or property to which the action relates shall not be taken in execution, but it may be arrested and detained under the provisions of section 22 of the County Courts Admiralty Jurisdiction Act, 1868, or kept under arrest, if already arrested. Proceedings on order against unknown defendant.

24. Where an order has been obtained in an action against an unknown defendant, and the name of the defendant is subsequently ascertained, the adverse solicitor may deliver to the registrar a præcipe stating the name, address, and description of the defendant, and thereupon the registrar shall issue to the solicitor, or if required to the bailiff for service, a notice of the judgment or order, stating that if the defendant does not within four clear days from the day of service deliver a præcipe to the registrar applying for a re-hearing of the action, the vessel or property to which the action relates will be sold in execution. Proceedings on discovery of unknown defendant.

25. The notice shall be served personally upon the defendant, unless the Judge, or in his absence the registrar, shall upon facts duly verified upon affidavit allow of substituted service. Service of notice on defendant.

Execution against Vessel.

26. Where under a warrant of execution a vessel is seized, the Proceedings on execution

A.D. 1876. high bailiff shall, before selling the same, cause an inventory and valuation thereof to be made by an appraiser, and the vessel shall not be sold for less than the appraised value thereof, except by order of the Court, and 10s. per cent. on the appraised value of the vessel, with reasonable expenses for travelling and maintenance, if the vessel is beyond three miles from registrar's office, shall be allowed to the appraiser.

against a vessel.

Proceeds of sale to be paid into Court.

Delivery of property to purchaser.

27. On the completion of the sale the high bailiff shall pay the proceeds arising therefrom into Court, return the warrant, and file an account of the sale and of his fees thereon, signed by him, together with the certificate of appraisement signed by the appraiser.

28. On the completion of the purchase the high bailiff shall deliver up the property to the purchaser, and if required so to do shall execute a bill of sale to him at the expense of the purchaser.

Transfer of Sale.

Proceedings on transfer of sale.

Application for transfer of proceedings for sale.

Application to be transmitted to Judge.

29. Where the vessel has been arrested or has been seized under a warrant of execution, and the sale of the vessel has been ordered to be transferred to the High Court of Justice, the vessel shall be retained by the high bailiff until the marshal shall, by order of the High Court of Justice, take possession thereof.

30. A solicitor desiring that the sale of any vessel or property should be conducted in the High Court of Justice, may at any time after judgment give security to the amount of 10*l.*, and deliver to the registrar an application for an order for the transfer of the proceedings for sale to the said Court.

31. The registrar shall transmit such application to the Judge for his order thereon, if the Court be not sitting, and shall in any case certify on the application that the security for costs has been given.

Notice of Defence in Collision.

Notice of defence in actions for damage by collision.

32. Where in actions for damage by collision the defendant intends to set up as a defence that the vessel was by compulsion of law in the charge of a pilot, he should give notice thereof to the adverse solicitor as soon after the service of summons as may be, and if he shall fail to give such notice the Judge shall, in exercising his discretion as to costs, consider what effect the non-delivery of the notice has had in the action.

Tenders.

Notice of proposed tender.

Notice of acceptance of tender.

33. A solicitor desiring to make a tender shall give a notice to the adverse solicitor of the terms and amount of the tender, and shall pay the amount into Court, and deliver a præcipe.

34. Within forty-eight hours from the payment the adverse solicitor shall file a notice stating whether he accepts or rejects the tender, and, if he shall not do so, he shall be deemed to have rejected it.

Payment out of Court.

Payment out of Court to solicitor.

35. Money ordered in an Admiralty action to be paid out of Court may be paid to the solicitor without the production of a power of attorney from the party entitled to receive the money, unless the Judge shall otherwise order.

36. Where more than one action has been instituted against a vessel or any property, and the same has been sold, the proceeds thereof shall be retained in Court, to abide the decision of the Court in the various actions, unless the Judge shall otherwise order.

A.D. 1875.
Retainer of
moneys in
Court where
more than
one action.

Appraisement.

37. The registrar may, on the application of either solicitor, and whether before or after judgment, order any property under arrest to be appraised.

Appraisement.

Records of the Court.

38. The solicitors in an action, their clerks, and the parties themselves, may, while the action is pending, and for one year after its termination, inspect, free of charge, all the records in the action.

Inspection
of records.

39. In a pending action no person other than the solicitor or his clerk, or the party in the action, shall be entitled to inspect the records in the action without the permission of the registrar.

Who en-
titled to in-
spection
during pen-
dency of
action.

40. In an action which is terminated, any person may, on delivering to the registrar a præcipe, and on payment of the proper fee, inspect the records in the action.

The like on
termination
of action.

Copies.

41. Any person entitled to inspect any instrument or document in an action shall, on delivering to the registrar a præcipe, and on payment of the proper charges for the same, be entitled to an office copy thereof.

Office
copies.

Assessors.

42. Every solicitor requiring the Judge to be assisted by two assessors shall, at the time of delivering the præcipe, pay to the registrar the sum of two guineas, if the amount claimed does not exceed 100*l.*, and four guineas if it does exceed that amount, and such payments shall be considered as costs in the action, unless otherwise ordered by the Judge.

Payment on
application
for assessors
by party.

43. Where the judge requires the assistance of two assessors, the above fees shall be paid by the plaintiff or his solicitor before the trial, and shall be costs in the action, unless otherwise ordered by the Judge.

The like on
requirement
of Judge.

44. Where an action is adjourned, the plaintiff shall pay the assessors' fees for the day of adjournment forthwith after the order of adjournment is made by the Court.

Assessors
fees on ad-
journment.

45. Upon the delivery of the aforesaid præcipe or upon the order of the Judge as last aforesaid, the registrar shall select from the list of assessors the names of two persons whom he may, having reference to the nature of the action to be tried, consider most capable of assisting the Judge in trying and determining it, and shall send to each of such persons by post a summons in the form annexed.

Selection of
assessors.

46. The registrar of the Court shall pay to every assessor for each day's attendance and service in every action one guinea or two guineas according as the amount claimed in the action does or does not exceed 100*l.*

Payment to
assessors.

A.D. 1875.

ORDER XXXVI.

Costs.

- | | |
|---|--|
| Taxation of costs. | 1. All costs shall be taxed by the registrar of the Court, subject to the review of such taxation by the Judge. |
| Taxation of costs under 30 & 31 Vict. c. 142, ss. 7 and 10. | 2. In taxing the costs incurred in the High Court of Justice previous to the transmission of the action to the County Court under sections 7 or 10 of the County Courts Act, 1867, the registrar shall tax the same according to the scale of costs and fees in use in such High Court of Justice. |
| Costs of witnesses. | 3. The costs of the witnesses, whether they have been examined or not, may, unless otherwise ordered by the Court, be allowed, though they have not been summoned, but their allowance for attendance shall in no case exceed the highest rate of the allowances mentioned in the scale in the schedule. |
| Compensation to seamen. | 4. Seamen necessarily detained on shore for the purpose of the action shall be allowed such remuneration as the Court may think reasonable compensation for their loss of time. |
| Appropriation of money paid into Court. | 5. Money paid into Court on a judgment shall be appropriated first in satisfaction of the Court fees and costs, and afterwards in satisfaction of the original demand. |
| Costs of warrants. | 6. Costs of warrants against the goods, whether executed or unexecuted or unproductive, shall be allowed against the defendant, unless the Judge shall otherwise direct. |
| Possession fees.
" & 10
Vict. c. 93,
s. 106. | 7. No possession fee shall be payable where an execution is paid out at the time of the levy; but if the officer shall necessarily remain in possession more than half an hour, and the execution shall be paid out on the day of levy, the possession fee for that day shall be charged. |
| Appraisalment. | 8. No appraisalment is to be made until the fifth day of the bailiff's holding possession of the goods under an execution, unless where the goods are of a perishable nature, or are sold at the request of the party, before the expiration of four days, or unless the goods are removed. |
| Taxation of costs under 19 & 20
Vict. c. 108,
s. 23. | 9. Costs in actions under the County Courts Act, 1856, s. 23, shall be taxed according to the scale of taxation used in the High Court of Justice, so far as it is directly applicable; and where it is not so applicable, the principle of that scale shall be followed. |
| Costs in actions where claim exceeds 20 <i>l</i> . | 11. In actions where the claim exceeds 20 <i>l</i> ., and the plaintiff recovers less than 20 <i>l</i> ., he shall, if the Judge shall so order, be entitled to recover costs, according to the scale relating to actions above 20 <i>l</i> ., and the defendant, if successful, shall be entitled to recover costs according to the said scale, unless the Judge shall otherwise order. |
| Costs of counter-claim. | 12. Where from the amount, or from the nature of any defence or counter-claim, the costs in an action for recovering or enforcing the same would be taxed upon a higher scale than that applicable to the action in which such defence or counter-claim is made, then the costs shall be taxed upon such higher scale. |
| Costs where plaintiff recovers less than he claims. | 13. Where the plaintiff recovers less than the amount of his claim, so as to reduce the scale of court fees and costs, he shall pay the difference, unless the reduction shall be caused by a set-off. |

ORDER XXXVII.

A.D. 1875.

6. Where a person desires to enter a plaint in a Court within the district of which he does not reside, he may, instead of attending in person or by agent at the Court, transmit, free of cost, to the registrar the following:—

Entry of
plaint by
letter.

- (1.) A præcipe showing the name, address, and description of the plaintiff and defendants, the cause of action, and the amount claimed, and where the claim exceeds 40s., as many copies of the statement of the particulars or cause of action as there are defendants, and an additional copy to file.
- (2.) A post office order for the fees payable upon the entry of the plaint payable at the post office of the court town.
- (3.) An envelope addressed to himself, with a penny postage stamp thereon.

And upon the receipt of the above the registrar shall enter the plaint, and forward the plaint note to the plaintiff in the addressed envelope.

7. For the purpose of the two foregoing rules the several districts of the metropolitan Courts shall be considered *inter se* as one district only.

Metropoli-
tan Courts.

8. Where by these rules any act may be done by any party, such act may be done either in person or by his solicitor or agent, if it can be legally done by an agent.

Party may
act by soli-
citor or
agent.

9. Where a party acts by solicitor, service of any proceeding or document upon such solicitor, or delivery of the same at his office, or sending the same to him by post, shall be deemed to be good service upon the party for whom such solicitor acts, as upon the day when the same is so served or delivered, or upon which in the ordinary course of post it would be delivered, except in cases where by these orders personal service upon a party is required.

Service on
solicitor
deemed ser-
vice on
party.

10. Where a solicitor undertakes the service of any process, he shall make the necessary copies of each process, and the registrar shall seal the same and return them to the solicitor for service.

Practice on
service by
solicitor.

11. Any notice relating to any interlocutory proceeding may, by leave of the registrar, be served by the solicitor of the party requiring to effect such service; but the costs of such service, and proof thereof, shall not be allowed, except by order of the Court.

Notice of
interlocu-
tory pro-
ceedings
may be
served by
solicitor.

52. A note of every judgment in an Admiralty action shall, within ten days of the making thereof, be transmitted by the registrar to the registrar of County Courts Judgments in London, who shall register the same as heretofore.

ADMIRALTY FORMS.

243.

PRÆCIPÉ ON ENTRY OF PLAINT.

Admiralty Jurisdiction.

In the County Court of _____, holden at
1, L.M., solicitor, hereby desire to commence an action for [state

A.P. 1875. *the nature of the suit*], on behalf of [*state name, address, and description of plaintiff*] against [*if the owner or owners be not known, state the owner or owners unknown of the property to which the action relates, describing its name and nature and where it then is; if known, state name, address, and description of party proceeded against, the name and nature of the property to which the suit relates, and where it is*], in the sum of [*state sum in letters*] pounds. And I consent that all instruments and documents in the said action may be left for me at [*state address*], [*add, where so desired*], and I require the summons to be served by the bailiff of the Court].

Dated the _____ day of _____

18
[To be signed by the party, his solicitor,
or his clerk for him.]

244.

PRÆCIPUE FOR PERMISSION FOR SUIT TO BE HEARD AT A SPECIAL PLACE.

Admiralty Jurisdiction.

In the County Court of _____, holden at _____

[Title of Action.]

I, X.Z., solicitor, do pray that permission may be granted for the hearing of this suit at [*here state the name of the place at which and description of the building in which it is desired that the sitting should be held, and if the building is not one in which the County Court ordinarily sits add, and I undertake to hire the use of the said building at my expense, to be allowed as costs in the suit if the Court shall allow thereof*].

Dated this _____ day of _____

18
[To be signed by the party, his solicitor,
or his clerk for him.]

245.

SUMMONS.

Admiralty Jurisdiction.

In the County Court of _____, holden at _____

(Seal)

Whereas an action for [*state the nature of the action*] has been instituted in this Court, on behalf of A.B. of _____, against the owner or owners unknown of the [*state description of vessel*], called the [*name of vessel*], (whereof C.D. is now or lately was master), [*where action is against owner or owners unknown of vessel and freight add, and the freight due for the transportation of the cargo now or lately laden therein; or where the action is against the owner or owners unknown of vessel, cargo, and freight, add instead thereof*], and the cargo now or lately laden therein, together with the freight due for the transportation thereof], in the sum of [*state sum in letters*] pounds.

You are hereby summoned to enter an appearance in the said action within four clear days of the service hereof.

You are also warned that if you do not enter an appearance

as aforesaid, the Judge of this Court will proceed to hear and determine the said action, or to make such orders therein as to him shall seem fit. A.D. 1875.

Dated this day of , 18 .
Registrar of the Court.

To the owner or owners of the [*state description and name of vessel*], and all persons who have or claim to have any right, title, or interest in the said vessel.

N.B.—The solicitor for A.B. is , of [*here state the address given in the præcipe*].

246.

SUMMONS.

Admiralty Jurisdiction.

In the County Court of , holden at
A.B., plaintiff [*address and description*].
C.D., defendant [*address and description*].

(Seal.)

Whereas an action [*state nature of suit*] has been instituted in this Court on behalf of the plaintiff against you in the sum of [*state sum in letters*] pounds.

You are hereby summoned to enter an appearance in the said action within four clear days of the service hereof.

You are also warned that if you do not enter an appearance as aforesaid, the Judge of this Court will proceed to hear and determine the said action, or to make such orders therein as to him shall seem fit.

Dated and sealed this day of , 18 .
Registrar of the Court.

To the defendant.

N.B.—The solicitor for the plaintiff is of
[*here state the address given in the præcipe*].

247.

WARRANT OF ARREST AND DETENTION.

Admiralty Jurisdiction.

In the County Court of , holden at .
[*Title of Action.*] (Seal.)

Whereas an action has been instituted in this Court on behalf of A.B. of , against the owner or owners of [*state description and name of vessel or property*], in the sum of [*state sum in letters*] pounds. These are therefore to require and order you to arrest the said and to keep the same under safe arrest until you shall receive further orders from this Court.

Given under the seal of the Court this day of , 18 .
By the Court. Registrar of the Court.

To the High Bailiff of the said Court,
and others the bailiffs thereof.

A.D. 1875.

248.

BAIL BOND.

Admiralty Jurisdiction.

In the County Court of _____, holden at

[*Title of Action.*]

Whereas an action for _____ has been instituted in this Court on behalf of *A.B.* of _____, against

Now therefore we [*state names, addresses, and description of sureties*] jointly and severally submit ourselves to the jurisdiction of the said Court, and consent that if he [*or they*] the said _____ shall not pay what may be adjudged against him [*or them*] in the said action, with costs, execution may issue forth against us, our heirs, executors, and administrators, our goods and chattels, for a sum not exceeding [*state sum in letters*] pounds.

[*Signatures of Sureties.*]

The bail bond was signed by the said _____, and the sureties, the _____ day of _____, 18 .

Before me,
Registrar of the Court,
or one of his clerks.

249.

ORDER OF RELEASE.

Admiralty Jurisdiction.

In the County Court of _____, holden at

(*Seal.*)

[*Title of Action.*]

You are hereby authorised and directed to release the now under arrest of this Court by virtue of its warrant, upon the payment of all costs, charges, and expenses attending the custody thereof.

Given under the seal of the Court, this _____ of _____, 18 .
By the Court.

Registrar of the Court.

To the High Bailiff of the said Court,
and others the bailiffs thereof.

250.

PRÆCIPUE TO ENTER AN APPEARANCE.

Admiralty Jurisdiction.

In the County Court of _____, holden at _____.

[*Title of Action.*]

I, *R.S.*, solicitor, hereby enter an appearance on behalf [*state name address, and description of party*], in the action for [*state nature of action*], which has been instituted in this Court on behalf of [*state name, address, and description of plaintiff*] against [*state against whom*]

the action is instituted]. And I consent that all instruments and **A.D. 1875.**
documents in the action may be left for me at *[state address]*. — — —

Dated the day of , 18 .
[To be signed by the defendant, his
solicitor, or his clerk for him.]

251.

NOTICE OF HEARING.

Admiralty Jurisdiction.

In the County Court of , holden at .
[Title of Action.] (Seal.)

Take notice that this action will be heard at a Court to be holden
on the day of , at *[here state where Court is
to be held]*, at the hour of o'clock in the noon.

Dated and sealed this day of , 18 .
Registrar of the Court.

To the plaintiff and defendant.

252.

ORDER OF TRANSFER TO HIGH COURT OF JUSTICE.

Admiralty Jurisdiction.

In the County Court of , holden at .
[Title of Action.] (Seal.)

Whereas it appears that the subject of this action exceeds the limit
in respect of the amount of the Admiralty jurisdiction of this Court *[or
state otherwise as the case may be]*, it is ordered that this suit be trans-
ferred to the Probate, Divorce, and Admiralty Division of the High
Court of Justice, together with the proceedings that have been had
therein in this Court.

Given under the seal of the Court, this day of , 18 .
By the Court.
Registrar of the Court.

253.

ORDER OF TRANSFER TO COUNTY COURT OR THE HIGH COURT OF JUSTICE.

Admiralty Jurisdiction.

In the County Court of , holden at .
[Title of Action.] (Seal.)

Whereas it hath been made to appear that the action could be more
conveniently prosecuted in the County Court of , holden
at , appointed to have Admiralty jurisdiction *[or in the
High Court of Justice]*, it is ordered that this action be transferred to
the said Court, together with the proceedings that have been had
therein in this Court.

Given under the seal of the Court, this day
of 187 .
By the Court.
Registrar of the Court.

A.D. 1875.

254.

JUDGMENT OR ORDER.

Admiralty Jurisdiction.

In the County Court of _____, holden at _____.

[*Title of Action.*] (Seal.)

It is this day adjudged that the plaintiff *A.B.* of _____, do recover against the defendant [or defendants] *C.D.* of _____, the sum of _____ pounds [*in an action for salvage, for services rendered to the above vessel; or in an action for towage, for services rendered in towing the said vessel; or in an action for necessities, for necessities supplied to the said vessel; or in an action for wages, for wages in respect of services rendered on board the said vessel; or in an action for damage to cargo, for damage caused to the cargo carried in the said vessel; or in an action for damage by collision, for damage caused to the said vessel by the defendant's vessel the [the description and name of the vessel which caused the damage], together with the costs of this action.*

And it is ordered that the defendant [or defendants] do pay the same to the plaintiff or his solicitor within _____ days [*add where the name of the defendant is known*], and that in default thereof the registrar shall upon the application of the plaintiff or his solicitor issue a warrant of execution against the vessel or property of the defendant].

Given under the seal of this Court, this _____ day of _____, 18 _____.

By the Court.

Registrar of the Court.

255.

PRÆCIPUE FOR A WARRANT OF EXECUTION.

Admiralty Jurisdiction.

In the County Court of _____, holden at _____.

[*Title of Action.*] (Seal.)

I, *S.R.*, solicitor, do require a warrant of execution to issue against the goods of *C.D.*, of _____, who was ordered by this Court, on the _____ day of _____, 18 _____, to pay to the plaintiff or myself, as his solicitor, the sum of _____ pounds for [*here insert for what the sum was ordered to be paid*], and who has not paid the said sum as so ordered.

Dated the _____ day of _____, 18 _____.
[*Signature of Solicitor.*]

256.

WARRANT OF EXECUTION AGAINST THE VESSEL OR PROPERTY OF DEFENDANT.

Admiralty Jurisdiction.

In the County Court of _____, holden at _____.

[*Title of Action.*] (Seal.)

Whereas on the _____ day of _____, 18 _____, the plaintiff

obtained a judgment in this Court against the defendant for the sum A.D. 1875.
 of £ for and costs; and it was there-
 upon ordered by the Court that the defendant should pay the same
 to the plaintiff on the day of .

And whereas default has been made in payment according to the said order. These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this Court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, including the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this Court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court, this day of
 18. .

By the Court.

Registrar of the Court.

To the High Bailiff of the said Court,
 and others the Bailiffs thereof.

— — —
 257.

ORDER FOR TRANSFER OF SALE TO HIGH COURT OF JUSTICE.

Admiralty Jurisdiction.

In the County Court of , holden at

(Seal.)

[Title of Action.]

Whereas in an action instituted in this Court on behalf of A.B. of , against [state name of defendant], the Judge of this Court has ordered [here insert the terms of the decree or order]. And whereas the plaintiff [or defendant] in the said suit is desirous that the sale of the vessel should be conducted in the Probate, Divorce, and Admiralty Division of the High Court of Justice, and has given security for the sum of ten pounds. Now I, A.B., solicitor, pray that an order to transfer the proceedings for sale to the said division of the High Court of Justice do issue.

Dated the day of , 18 ,

[Signature of Solicitor.]

I hereby certify that the security above mentioned has been duly completed.

Registrar of the Court.

I hereby order the transfer to be made as prayed.

Judge of the Court.

A.D. 1875.

258.

PRECIPUE FOR PAYING IN MONEY.

Admiralty Jurisdiction.

[*Title of Action.*]

In the County Court of , holden at
I, A.B., of , do pay the sum of [*state sum in letters*] pounds
into Court in this action at the request and by the authority of
, he having agreed to pay [*or tender*] the same in settlement
of the claim of the plaintiff [*or as the case may be*].

Dated the day of , 18 .

[*To be signed by the party, his solicitor,
or his clerk for him.*]

259.

SUMMONS TO ASSESSORS.

Admiralty Jurisdiction.

In the County Court of , holden at

[*Title of Action.*]

(*Seal.*)

You are hereby summoned to appear and serve as an assessor in this
Court at the on the day of , 18 , at
the hour of in the noon, to assist the Judge of this
Court in the hearing and determining of this suit, and in default of
attendance you will be liable to a penalty of a sum not exceeding
five pounds, under section 15 of the County Courts Admiralty Juris-
diction Act, 1868.

Dated this day of , 18 .

Registrar of the Court.

To ,
of

260.

ORDER FINING AN ASSESSOR FOR NON-ATTENDANCE.

Admiralty Jurisdiction.

In the County Court of , holden at

(*Seal.*)

[*Title of Action.*]

Whereas was duly summoned to appear and serve as
an assessor at a Court holden at , on the day
of , 18 , and whereas he has neglected, without sufficient
cause shown, to appear and serve as required : It is hereby ordered
that he shall forthwith [*or on the*] day of , 18]
pay to the registrar of this Court a fine of £ , for such
neglect.

Given under the seal of the Court this day of , 18

By the Court.

Registrar of the Court.

ADMIRALTY ACTIONS BOOK.

Pro formd.

DATE.			
Day.	Month.	Year.	
10	Feb.	1869	Action for damage by collision, instituted on behalf of <i>A.B.</i> , of , against the owner or owners, unknown, of a schooner named <i>The Kate</i> , lying at , within the district of the Court, in the sum of 200 <i>l.</i> Solicitor for the plaintiff, <i>Mr. L.M.</i> of .
10	Feb.	1869	Application made for arrest ; affidavit filed ; warrant issued, the evidence being satisfactory.
11	Feb.	1869	Application for Judge's permission for suit to be heard at .
13	Feb.	1869	Permission granted.
15	Feb.	1869	Appearance entered by <i>C.D.</i> , of . Solicitor for defendant, <i>R.S.</i> , of .
18	Feb.	1869	The action having been heard the Court decreed that [<i>here set forth the decree</i>]. <i>If any further proceedings had, they should be entered in the same manner.</i>

PART III.

**A.D. 1865. EXTRACT FROM INSTRUCTIONS TO RECEIVERS OF
WRECK AND DROIT OF ADMIRALTY PREPARED AND
ISSUED BY THE BOARD OF TRADE, 1865.**

Salvage (p. 27).

Duties of
receiver
generally
with respect
to salvage.

81. The decision of questions as to salvage, if the parties cannot be brought to terms, rests, in more important cases, with the High Court of Admiralty in England, the High Court of Admiralty in Ireland, and the Court of Session in Scotland, and in minor cases :—

- (a) In England with two justices, a stipendiary magistrate, or a County Court Judge; or
- (b) In Scotland with two justices, or a stipendiary magistrate, or the sheriff or sheriff substitute of any county; and
- (c) In Ireland with two justices, a stipendiary magistrate, the recorder of any borough in which there is a recorder, or the chairman of Quarter Sessions in any county.

The words Court of Session in section 460 of the Act of 1854, mean and include either division of the Court of Session, or the lord ordinary officiating on the bills during vacation.

Summary
jurisdiction
in cases
where the
value of the
property
does not
exceed 1000*l*.

82. Summary jurisdiction in these minor cases is no longer limited to cases in which the amount claimed as salvage is £200 or under, but by section 49 of "The Merchant Shipping Act Amendment Act, 1862," summary jurisdiction is extended to cases in which *the value of the property saved does not exceed £1000*, whether the salvage services were rendered within the limits of the United Kingdom or not.

Receiver
may appoint
a valuer in
certain
cases.

83. To determine the value the receiver has power, under section 50 of the Merchant Shipping Act, 1862, to employ a valuer whenever any salvage question arises, if either of the parties apply to him for the purpose. The valuation, when made, is to be signed by the valuer and kept by the receiver. The receiver should make and attest two copies and hand one to the salvors or their agent, and the other to the owners or their agent. These copies may be received in evidence in any subsequent proceedings. Application to the receiver to appoint a valuer should be made in the Form marked Wr. 14. The valuer should be appointed in the Form Wr. 15, and certified copies of the valuation should be furnished in the Form Wr. 16.

Receiver to
assist in en-
deavouring
to settle the
claims.

86. The receiver has important duties to perform in endeavouring to settle salvage claims amicably; in providing for the payment of what may be due by detaining the property saved; in releasing the property on proper security being given, in selling the property when necessary to satisfy the claims of salvors, and in apportioning money paid in satisfaction of such claims amongst the salvors.

87. The receiver will in all cases of salvage claims, and especially in the case of foreign vessels, endeavour at once to settle them

amicably, which, as he will have power to detain the property for **A.D. 1865.** the settlement of the claims, and as he will, either of his own knowledge or from communication with the coastguard officer, be in possession of the facts of the case, he will have great facilities for doing. If he cannot bring the parties to terms, the dispute must be settled in the manner pointed out by the 460th, 561st, 462nd, 463rd, 464th, and 465th sections of "The Merchant Shipping Act of 1854," and section 49 of the "Merchant Shipping Act Amendment Acts, 1862." In the minor cases referred to in the paragraphs 81 and 82, the officer of the coast guard will always be prepared to give his services as assessor or umpire if required so to do. In cases where the wreck is unclaimed, and any question arises as to salvage, the receiver will, before paying any salvage claims, or referring the matter to be decided at law, report the case, with the claims made and his opinion on them, to the Board of Trade.

Mode of settling salvage claims.

88. The receiver will observe, and will, when necessary, point out to persons interested, that either the owners of property salvaged, or their agents can, under the Merchant Shipping Act, 1854, commence proceedings in salvage cases.

Proceedings may be commenced either by owners or salvors.

89. In performing the duties required of the receiver in these cases he will remember that he occupies an independent and quasi judicial position; that it is his especial duty, whilst providing for the claims of *bonâ fide* salvors, and thereby furthering the real interest of all persons interested in trade or shipping, to endeavour, so far as his powers permit, to protect those interests against vexatious and improper claims.

Receiver to act impartially.

90. The cases in which salvage is payable are stated in the 458th and 459th sections of the Act. Two points require especial notice. Salvage is by the Act made payable for the preservation of human life, and claims on this ground to take priority of all other claims. No rules are or can be laid down as to the amount to be appropriated for this purpose, but courts of law, in determining it, will no doubt be guided by the same principles which govern ordinary salvage cases, so far as those principles are applicable.

Salvage for saving life a charge on the ship.

When the property saved is not sufficient, the Board of Trade has power to grant rewards for saving life out of the Mercantile Marine Fund. But the board will confine its rewards strictly to such cases, and it will be the duty of the receiver in every case in which a claim is made on this ground, or in which he thinks such a claim ought to be made, to make a report to the Board of Trade on Form, Wr. 32 (late Wr. 19), stating the circumstances of the case, the value of the property saved after deducting expenses, together with his own opinion on the claim. In making this report, he should communicate with the officer of the coast guard, if any, who has been present, and that officer should join in and sign the report, or state the grounds of his dissent.

Will in some cases be paid by the Board of Trade.

91. The second point to be observed is, that the receiver himself can never be entitled to salvage in respect of "*wreck*." In cases of assistance rendered to ships in distress and to the persons on board, the Act does not preclude him from such a claim; but it is clear that he cannot claim salvage for any of the duties imposed on him by the Act, for which certain fixed fees are to be paid. It can, therefore, only be in very special cases, where he incurs some risk, or undertakes some labour or expense, altogether beyond the scope of his duties as receiver, that he can make any claim to salvage. No

Receiver claims for salvage.

A.D. 1865. powers which he possesses as receiver must be used to determine or enforce his own claims to salvage. If they are disputed, he must at once report the case to the Board of Trade.

Coastguard claim for salvage.

92. Officers of the coastguard and their men will, if they incur some risk, or undertake some labour beyond the scope of the duties by the Act, and by these instructions committed to them (e.g., if they actually put out to sea, and with risk and effort save lives or property from a wrecked vessel), be entitled to salvage in the same manner, and to the same extent, as other salvors. In other cases they will be remunerated as hereinafter mentioned. Exorbitant or improper claims to salvage on the part of any public servants will be uniformly discountenanced by the Board of Trade.

Principles for determining the amount due

93. The amount due for salvage depends so much on the circumstances of each case, that it is impossible to do more than call the attention of the receiver to certain general principles which govern these cases. If the receiver is in any difficulty, he should report the case, with the circumstances and his opinion, to the Board of Trade. In settling the amount, he will avail himself of the assistance and knowledge of the coastguard officer of the district or station.

Ingredients of salvage service.

94. The main ingredients of a salvage service are :—

- (a.) The degree of danger from which the lives or property are rescued.
- (b.) The value of the property saved.
- (c.) The risk incurred by the salvors.
- (d.) The value of any of the property, by the use of which the services are rendered and the danger to which it was exposed.
- (e.) The skill shown in rendering the services.
- (f.) The time and labour occupied.

Where all these concur in the performance of any salvage service the reward ought to be large; and in proportion as fewer of these ingredients are to be found, so should the reward be less. But where scarcely any, or only the last of them exist, the service can hardly be denominated a salvage service; it is little if nothing more than mere work and labour, and should be rewarded accordingly.

Degree of danger.

- (a.) In estimating the degree of danger from which the lives or property were rescued, regard should be had to—

The damage sustained by the vessel itself;
The nature of the locality from which she was rescued;
The season of the year when the services were rendered, and if the weather at the time was not tempestuous, the probability or improbability of its becoming so;
Ignorance or knowledge (as the case may be) of the locality on the part of the master and other persons on board the vessel saved.

Value of property saved.

- (b.) The value of the property saved is also an essential ingredient in the amount of remuneration to be awarded. If the value of the property be small, the reward must be small; if large, a greater reward may be given, for in proportion to that value is the benefit to the owners, which is one of the primary considerations in settling the amount of remuneration. The amount of the reward should not, however, increase in direct proportion to the value of the property.

The object of the Courts is to give an adequate reward; A.D. 1865. Courts of Admiralty, therefore, always give a smaller proportion when the property is large.

As a general rule it may be stated that Courts of Admiralty very seldom, if ever, give more than half the value of the property saved. This should, in fact, be regarded as the maximum, except in some few cases where the services have been highly meritorious, and the value of the property saved is but small.

- (c.) The risk incurred by the salvors themselves, if necessarily incidental to the performance of the service, is the most important ingredient in estimating the amount of salvage to be awarded. The value of human life is that which is and ought to be principally considered in the preservation of other men's property: and if this be satisfactorily proved to have been hazarded, the salvors should be most liberally rewarded; and when not only risk has been incurred, but actual loss of life has ensued, a still larger amount of salvage should be given. Risks incurred by salvors.
- (d.) The value of the property by which the services have been rendered is not an unimportant element in estimating the reward to be given, provided it has been exposed to risk and danger in the performance of the service. The greater the risk incurred by the salvors or their property, the greater should be the remuneration. It is from the same consideration that no salvage is allowed for the use of her Majesty's ships, or the consumption of stores and articles belonging to her Majesty, as even were the vessel totally lost in rendering the services the loss would not fall on the salvors. Value of and risk to property used in rendering the salvage service.
- (e.) The skill and knowledge of the salvors is an essential ingredient in a meritorious salvage service. The same skill, however, that would be required from duly licensed pilots, is not to be expected from ordinary smackmen or boatmen assuming the management of vessels in cases of difficulty; but to entitle such salvors to reward it must be shown that they possessed skill commensurate with their vocation and condition in life, and adequate to the duties they undertook to perform. Skill shown by salvors.

Where the services have been performed by pilots, care should be taken to ascertain that the services were really of a salvage nature, and that the vessel was actually in distress; for otherwise they must be rewarded merely as pilotage. The rate of remuneration to pilots has, under the provisions of the Pilot Acts, been fixed on a liberal scale, and in return they are bound to afford their assistance in all weathers, except at the risk of their lives. It is, however, a settled doctrine of the Court of Admiralty, that pilots may claim as salvors in circumstances of great danger, or where other than mere pilotage services have been required of them. No pilot is bound to take charge of a vessel in distress for mere pilotage reward; and if he do take charge of a vessel so circumstanced he is entitled to a salvage remuneration. In all such cases, the skill and knowledge possessed by persons of this class fairly entitle them to a liberal reward.

95. When the services also have been rendered by steam vessels, Service by steam vessels.

A.D. 1865. they are always considered as entitled to a very liberal reward, not only on account of the great value of the property which is thereby exposed to risk, but because of the great skill and power of vessels of that description, and the expedition with which services are generally performed by them. Steam vessels are usually fitted out at great expense, and they are so peculiarly adapted to rescue other vessels from positions of great danger, from which no human power could save them, that they are entitled to be liberally rewarded. When, however, an agreement has been made by a steam vessel for the performance of an ordinary towage service, such an agreement should not be lightly set aside on account of any unfavourable change in the weather, or of any trifling circumstance occurring not materially affecting the performance of the stipulated service. If, indeed, it should be discovered that the vessel towed had been damaged previous to the agreement being made, so as materially to increase the difficulty of towing her, and that circumstance had been kept from the knowledge of those in charge of the steam vessel, the agreement would not be binding, and a claim of salvage might be preferred. Agreements, however, should in general be considered as binding on the respective parties; and if the existence of an agreement be once established, the onus rests upon the party impeaching it to show by a preponderance of evidence, that the agreement has been abandoned by consent of both parties, or that the circumstances have so entirely changed as to make a strict performance of the contract a matter of manifest injustice to the one party or the other. But it is no argument on the one side or the other against the validity of such an agreement, that greater or fewer difficulties than were anticipated, in consequence of the change of weather or other circumstances, attended its performance.

Principles on which apportionment is to be made.

97. The principles which regulate the apportionment of a salvage reward amongst the parties entitled thereto, are in most cases comparatively simple. The cases which will fall within the cognisance of the receivers will generally be found to belong to one or other of the following classes. Where the salvage services have been rendered:—

- (a.) By revenue cruisers or coastguard men.
- (b.) By smacksmen, boatmen, or fishermen.
- (c.) By landsmen or beachmen.
- (d.) By the master and crew of some vessel.

Revenue cruisers and coastguard.

- (a.) As regards the first class of salvors, the revenue cruisers and coastguard men, rules have been laid down for the distribution of rewards of all kinds amongst the officers and men engaged; and the receivers should therefore pay over the whole amount due to the officers and men, to the inspecting officer of the division, who will distribute the same under the authority of the comptroller-general of the coastguard. A special report should be made by the inspecting officer in cases where special skill or enterprise has been shown, or special risk incurred by any individual, in order that directions may be issued, if necessary, for giving a special reward.

Smacksmen, boatmen, and fishermen.

- (b.) With regard to the second class of salvors, the smacksmen, boatmen, and fishermen, it will generally be found that there is a scale of distribution recognised and agreed upon amongst them; the smack or boat has a certain number of shares, and the remainder belong to the master and crew in

certain agreed proportions. Where such a scale exists, it **A.D. 1865.** should be strictly adhered to in making an apportionment of salvage, unless indeed any one or more of the men have shown great skill and enterprise or incurred greater risk than the others, when an exception may sometimes be made in their favour. Where, however, salvage has been awarded to the crew of a smack or boat, amongst whom there is no such agreed scale of distribution, the receivers will do well in making the apportionment to follow the scale of distribution generally adopted amongst the smacksmen and boatmen in the neighbourhood; as such agreements are generally found to be based upon principles of justice and equity, and are such as best conduce to the interests of the community by whom they have been adopted.

Where a cargo of fish has been spoiled or injured in rendering the salvage service, care should be taken, in making the apportionment, to ascertain upon whom the loss will fall, and a corresponding allowance should be made to them.

- (c.) With regard to the third kind of salvors, beachmen and Beachmen and landsmen. landsmen, it will generally be proper to divide the salvage equally amongst them all. They will probably, in most instances, be found to belong to the same class of life, to have incurred the same risk and the same amount of labour, and to have shown the same skill in the performance of the services. Should any of them have, however, greatly distinguished themselves, it will be proper to give them a larger proportion of the salvage award.
- (d.) The fourth class of case, where the salvage services have been Vessel and her crew. rendered by a vessel and her master and crew, will be found by the receivers to be most difficult, as the apportionment must depend upon a consideration of the whole circumstances of the case, and whether the preservation of the property is due principally to the services of the salving vessel herself, or to the personal exertions and risk incurred by the master or the crew. As a general rule, it may be stated that where the services have been chiefly performed by the vessel herself, as in the case of a derelict, where the property has been towed into a place of safety, one half of the salvage reward is given to the owners of the salving vessel, from one-fourth to one-eighth to the master, and the remainder amongst the crew in proportion to their wages. This is the scale of distribution usually adopted, where the salvage services have been performed by steamers, and where it may generally be said that success is due chiefly to the power and construction of the vessel herself. Where, however, the principal part of the services have not been rendered by the vessel, and where the vessel has not been exposed to any risk or danger, but where the preservation of the property is due in great measure to the personal exertions of the master and crew, then a much smaller portion of the salvage is awarded to the owners of the vessel. It is, however, a question of appreciation, dependent entirely upon the circumstances of each particular case, and in regard to which no positive general rule can be laid down. The greater the risk to the master and crew, and the less the risk to the vessel, the greater

A.D. 1863. To make the use of these portable lights more certain and easy, they shall each be painted outside with the colour of the light they respectively contain, and shall be provided with suitable screens.

Art. 7. Ships, whether steam-ships or sailing ships, when at anchor in roadsteads or fairways, shall between sunset and sunrise exhibit, where it can best be seen, but at a height not exceeding twenty feet above the hull, a White Light in a globular lantern of eight inches in diameter, and so constructed as to show a clear uniform and unbroken light visible all round the horizon, and a distance of at least One Mile.

Art. 8. Sailing pilot vessels shall not carry the lights required for other sailing vessels, but shall carry a White Light at the mast-head visible all round the horizon, and shall also exhibit a Flare-up Light every Fifteen Minutes.

Art. 9. Open fishing boats and other open boats shall not be required to carry side lights required for other vessels; but shall, if they do not carry such lights, carry a lantern having a Green Slide on the one side and a Red Slide on the other side; and on the approach of or to other vessels such lantern shall be exhibited in sufficient time to prevent collision, so that the Green Light shall not be seen on the port side nor the Red Light on the starboard side.

Fishing vessels and open boats when at anchor or attached to their nets and stationary shall exhibit a bright White Light.

Fishing vessels and open boats shall, however, not be prevented from using a Flare-up in addition if considered expedient.

Rules concerning Fog Signals.

Art 10. Whenever there is a fog, whether by day or night, the fog signals described below shall be carried and used, and shall be sounded at least every Five Minutes, viz :—

- (a.) Steam-ships under weigh shall use a Steam Whistle placed before the funnel not less than eight feet from the deck.
- (b.) Sailing ships under weigh shall use a Fog Horn.
- (c.) Steam-ships and sailing ships when not under weigh shall use a Bell.

Steering and Sailing Rules.

Art. 11. If two Sailing Ships are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to Port, so that each may pass on the port side of the other.

Art. 12. When two sailing ships are crossing so as to involve risk of collision, then if they have the wind on different sides, the ship with the wind on the port side shall keep out of the way of the ship with the wind on the starboard side, except in the case in which the ship with the wind on the port side is close hauled and the other ship free, in which case the latter ship shall keep out of the way; but if they have the wind on the same side, or if one of them has the wind aft, the ship which is to windward shall keep out of the way of the ship which is leeward.

Art. 13. If two Ships under Steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to Port, so that each may pass on the port side of the other.

Art. 14. If two Ships under Steam are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other.

Art. 15. If two Ships, one of which is a Sailing ship and the other a Steam-ship, are proceeding in such directions as to involve risk of collision, the steam-ship shall keep out of the way of the sailing ship. A.D. 1863.

Art. 16. Every Steam-ship, when approaching another ship so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steam-ship shall, when in a fog, go at a moderate speed.

Art. 17. Every vessel overtaking any other vessel shall keep out of the way of the said last-mentioned vessel.

Art. 18. Where by the above rules one of two ships is to keep out of the way, the other shall keep her course, subject to the qualifications contained in the following article.

Art. 19. In obeying and construing these rules due regard must be had to all dangers of navigation; and due regard must also be had to any special circumstances which may exist in any particular case rendering a departure from the above rules necessary in order to avoid immediate danger.

Art. 20. Nothing in these rules shall exonerate any ship or the owner or master or crew thereof from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen or by the special circumstances of the case.*

ORDER IN COUNCIL EXPLAINING ARTICLES 11 AND 13 OF A.D. 1863.
THE RULES FOR PREVENTING COLLISIONS AT SEA.

[30th July, 1868.]

The said two articles numbered 11 and 13 respectively only apply to cases where ships are meeting end on, or nearly end on, in such a manner as to involve risk of collision. They, consequently, do not apply to two ships which must, if both keep on their respective courses, pass clear of each other.

The only cases in which the said two articles apply are when each of the two ships is end on, or nearly end on, to the other; in other words, to cases in which *by day* each ship sees the masts of the other in a line, or nearly in a line with her own; and *by night* to cases in which each ship is in such a position as to see both the side lights of the other.

The said two articles do not apply *by day* to cases in which a ship sees another *ahead* crossing her own course; or *by night* to cases where the red light of one ship is opposed to the red light of the other; or where the green light of one ship is opposed to the green light of the other; or where a red light without a green light, or a green light without a red light is seen ahead; or where both green and red lights are seen anywhere but ahead.

* For decisions on these articles see next page.

DECISIONS WHICH REFER TO THE ABOVE ARTICLES.

- Art. 2. *The Anglo-Indian*, 33 L. T. N. S. 233 ; 23 W. R. 882.
 Art. 5. *The Esk* and *The Gitana*, 2 L. R. Ad. 350 ; 38 L. J. Ad. 33.
 Art. 7. *The C. M. Palmer*, 29 L. T. N. S. 120.
 Art. 9. *The Edith*, 10 Ir. Rep. Eq. 345.
 Art. 12. *The Spring*, 1 L. R. Ad. 99 ; 14 W. R. 975.
 The Peckforton Castle, 2 L. R. Ad. D. 222.
 Art. 13. *The Jesmond* and *The Earl of Elgin*, 4 L. R. P. C. 1 ; 8
 Moore P. C. N. S. 179.
 The Concordia, 1 L. R. Ad. 93 ; 14 L. T. N. S. 896.
 Art. 14. *The Ranger* and *The Cologne*, 4 L. R. P. C. 519 ; 27 L. T.
 N. S. 769.
 The Concordia, sup. *The Nor*, 30 L. T. N. S. P. C. 576.
 The Ada, 28 L. T. N. S. P. C. 825.
 The Velocity, 3 L. R. P. C. 44 ; 39 L. J. Ad. 20.
 The Franconia, 2 L. R. Ad. D. 8.
 Art. 15. *The Jennie S. Barker*, 4 L. R. Ad. 456 ; 44 L. J. Ad. 20.
 The American and *The Syria*, 4 L. R. Ad. 226. *The*
 Warrior, 3 L. R. Ad. 532 ; 27 L. T. N. S. 101. *The*
 Norma, 35 L. T. N. S. 418.
 Art. 16. *The Jesmond* and *The Earl of Elgin*, 4 L. R. P. C. 1 ; 8
 Moore P. C. N. S. 179.
 The Norma, sup.
 The Frankland, 4 L. R. P. C. 529 ; 27 L. T. N. S. 43.
 Art. 17. *The Earl Spencer*, 4 L. R. Ad. 431 ; 33 L. T. N. S. 23.
 Art. 18. *The Warrior*, 3 L. R. Ad. 533 ; 27 L. T. N. S. 101.
 The Norma, 35 L. T. N. S. 418.
 Art. 19. *The Aino*, *The Amelia*, 29 L. T. N. S. 118 ; 21 W. R. 707.
 The American and *The Syria*, 4 L. R. Ad. 226. *The*
 Warrior, sup. *The Ada*, 28 L. T. N. S. P. C. 825.
 Art. 20. *The John Fenwick*, 3 L. R. Ad. 500 ; 41 L. J. Ad. 500.
 The American and *The Syria*, sup.
 The Thomas Lea, 35 L. T. N. S. 406.
 The Philotaxe, 37 L. T. N. S. 540.

SCHEDULES (M. S. A. 1873).

SCHEDULE I.

Signals of Distress.

In the daytime, the following signals, numbered 1, 2 and 3, when used or displayed together or separately, shall be deemed to be signals of distress in the daytime :—

1. A gun fired at intervals of about a minute :
2. The international code signal of distress indicated by N C :

3. The distant signal, consisting of a square flag having either above or below it a ball or anything resembling a ball.

At night, the following signals, numbered 1, 2, and 3, when used or displayed together or separately, shall be deemed to be signals of distress at night :—

1. A gun fired at intervals of about a minute :
2. Flames on the ship (as from a burning tar barrel, oil barrel, &c.):
3. Rockets or shells of any colour or description fired at one time, at short intervals.

APPENDIX IV.

STATUTORY FORMS.

FORMS.

The forms marked with an asterisk(*) are those annexed to the rules, orders, and regulations for the High Court of Admiralty of England, made in pursuance of the provisions of the Acts of 3 & 4 Vict. cc. 65 and 66, and 17 & 18 Vict. c. 78, approved and confirmed by the Queen in Council, 29th November, 1859, and 24th March, 1871, and which are still in force. Those to which no such mark is affixed are those made in pursuance of 36 & 37 Vict. c. 66, and 38 & 39 Vict. c. 77. Those marked (J. A.) are such as will be found in the schedules to the last mentioned statutes.

PART I.

(a) APPENDIX (A).

(J. A.)

FORMS OF WRITS OF SUMMONS IN PERSONAM.

No. 1.

187 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between *A.B.*, plaintiff,
and
C.D. and *E.F.*, defendants.

Victoria, by the grace of God, &c.

To *C.D.* of in the county of and *E.F.* of

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Division of our High Court of Justice, in an action at the suit of *A.B.*; and take notice, that in default of your so doing the plaintiff may proceed therein and judgment may be given in your absence. Witness, &c.

Memorandum to be subscribed on the writ.

N.B.—This writ is to be served within (*twelve*) calendar months from the date thereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

(a) This and the succeeding subordinate headings and figures refer to Schedule to the Judicature Acts.

The defendant [*or defendants*] may appear hereto by entering an appearance [*or appearances*] either personally or by solicitor at the [] office at .

Indorsements to be made on the writ before issue thereof.

The plaintiff's claim is for, &c.

This writ was issued by *E.F.*, of , solicitor for the said plaintiff, who resides at , or, this writ was issued by the plaintiff in person, who resides at [mention the city, town, or parish, and also the name of the street and number of the house of the plaintiff's residence, if any].

Indorsement to be made on the writ after service thereof.

This writ was served by *X.Y* on *L.M.* [the defendant, or one of the defendants], on Monday, the day of , 18 .
(Signed) *X.Y.*

No. 2.

Writ for Service out of the Jurisdiction, or where Notice in lieu of Service is to be given out of the Jurisdiction.

187 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between *A.B.*, plaintiff,
and
C.D. and *E.F.*, defendants.

Victoria, by the grace of God, &c.

To *C.D.* of

We command you, *C.D.*, that within [*here insert the number of days directed by the Court or Judge ordering the service or notice*] after the service of this writ [*or notice of this writ, as the case may be*] on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Division of our High Court of Justice in an action at the suit of *A.B.* ; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.

Memoranda and Indorsements as in Form No. 1.

Indorsement is to be made on the writ before the issue thereof.

N.B.—This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction.

(A.)

Writ of Summons in Admiralty Action in rem.

187 . [*Here put the letter and number.*]

In the High Court of Justice.
Admiralty Division.

Between *A.B.*, plaintiff,
and

the Owners of the
Victoria, by the Grace of God, &c.

To the owners and parties interested in the ship or vessel
of the port of [or cargo, &c., as the case may be].
We command you, that within eight days after the service of this

3. *Damage to cargo otherwise.*

The plaintiff as owner of goods laden on board the vessel *Mary*, on a voyage from Lisbon to England, claims from the owner of the said vessel £ for damage done to the said goods during such voyage.

4. *In causes of possession.*

The plaintiff, as sole owner of the vessel *Mary*, of the port of , claims to have possession decreed to him of the said vessel.

5. The plaintiff claims possession of the vessel *Mary*, of the port of as owner of 48-64th shares of the said vessel against *C.D.*, owner of 16-64th shares of the said vessel.

6. The plaintiff as part owner of the vessel *Mary*, claims against *C.D.*, part owner and his shares in the said vessel £ as part of the earnings of the said vessel due to plaintiff.

7. The plaintiff as owner of 48-64th shares of the vessel *Mary*, of the port of , claims possession of the said brig against *C.D.* the master thereof.

8. The plaintiff under a mortgage, dated the day of claims against the vessel *Mary*, £ , being the amount of his mortgage thereon, and £ for interest.

9. The plaintiff as assignee of a bottomry bond, dated the day of , and granted by *C.D.* as master of the vessel *Mary*, of the port of , to *A.B.*, at St. Thomas's in the West Indies, claims £ against the vessel *Mary* and the cargo laden thereon.

10. *By a part owner of a vessel.*

The plaintiff as owner of 24-64th shares of the vessel *Mary*, being dissatisfied with the management of the said vessel by his co-owners, claims that his co-owners shall give him a bond in £ for the value of the plaintiff's said shares in the said vessel.

11. The plaintiffs as owners of the derelict vessel *Mary*, of the port of , claim to be put in possession of the said vessel and her cargo.

12. *By Salvors.*

The plaintiffs as the owners, master, and crew of the vessel *Caroline*, of the port of , claim the sum of £ for salvage services performed by them to the vessel *Mary*, off the Goodwin Sands, on the day of .

13. *Claim for Towage.*

The plaintiffs as owners of the steam-tug *Jane*, of the port of , claim £ for towage services performed by the said steam-tug to the vessel *Mary*, on the day of .

14. *Seamen's Wages.*

The plaintiffs as seamen on board the vessel *Mary*, claim £ for wages due to them, as follows (1), the mate 30% for two months' wages from the day of .

15. *For Necessaries.*

The plaintiffs claim £ for necessaries supplied to the vessel *Mary*, at the port of Newcastle-on-Tyne, delivered on the day of and the day of .

Negligence.

(a) The plaintiff's claim is for damages for injury to the plaintiff [or, if by husband and wife, to the plaintiff, *C.D.*] by

(a) The following indorsements are taken from App. A, Pt. II., s. 4, of the Judicature forms, with such alterations as make them applicable to Admiralty actions.

The plaintiffs, as owners of the Falmouth breakwater, claim £ against the ship *Uhla* for damage done to the said breakwater by the said ship in the month of June last.

The plaintiff's claim is for damages against the steamship *Sylph* for injury to the plaintiff in the River Mersey, in the month of May last, by the negligent navigation of the said steamship.

The plaintiff's claim is as executor of *A.B.* deceased, for damages for the death of the said *A.B.*, against the vessel *Franconia* and loss of his goods caused by a collision with the ship *Strathclyde*, which took place in the Straits of Dover in the month of February last.

Lord Campbell's Act.

(J. A.)

SECTION VIII.

Indorsements of Character of Parties.

The plaintiff's claim is as executor [*or administrator*] of *C. D.*, deceased, for, &c.

The plaintiff's claim is against the defendant *A.B.*, as executor [*or, &c.*] of *C.D.*, deceased, for, &c.

The plaintiff's claim is against the defendant *A.B.*, as executor of *X.Y.*, deceased, and against the defendant *C.D.*, in his personal capacity, for, &c.

The claim of the plaintiff *C.D.*, is as executrix of *X.Y.*, deceased, and the claim of the plaintiff *A.B.* as her husband, for

By husband and wife, executrix.

The claim of the plaintiff is against the defendant *C.D.*, as executrix of the defendant *C.D.*, deceased, and against the defendant *A.B.*, as her husband, for

Against husband and wife, executrix.

The plaintiff's claim is as trustee under the bankruptcy of *A.B.*, for

Trustee in bankruptcy.

The plaintiff's claim is against the defendant as trustee under the bankruptcy of *A.B.*, for

The plaintiff's claim is as [*or the plaintiff's claim is against the defendant as*] trustee under the will of *A.B.* [*or under the settlement upon the marriage of A.B. and X.Y., his wife*].

Trustees.

The plaintiff's claim is as public officer of the bank, for

Public officer.

The plaintiff's claim is against the defendant as public officer of the bank, for

The plaintiff's claim is against the defendant *A.B.* as principal, and against the defendant *C.D.* as public officer of the bank, as surety, for

The plaintiff's claim is as well for the Queen as for himself, for

Qui tam action.

(A.)

Warrant of Arrest in Admiralty Action in rem.

187 . [Here put the letter and number.]

In the High Court of Justice.

Admiralty Division.

Between *A.B.*, Plaintiff,

and

The Owners of the

Victoria, &c.

To the Marshal of the Admiralty Division of Our High Court of Justice, and to all and singular his substitutes [*or, To the Collector or Collectors of Customs at the Port of*].

We hereby command you to arrest the ship or vessel of the port of [and the cargo and the freight, &c., as the case may be], and to keep the same under safe arrest, until you shall receive further orders from us.

Witness, Hugh MacCalmont, Baron Cairns, Lord High Chancellor of Great Britain, this day of , 18 .

Indorsement on Warrant of Arrest.

On the day of , 187 , the within-named or vessel, lying arrested by affixing this original warrant for a short time on the mast of the said vessel, and on taking off the process, by leaving a copy thereof fixed in its place.
Indorsed by me this day of 187 .

APPENDIX (B).

(J. A.)

FORM 5.

Notice of Payment into Court.

In the High Court of Justice. 1875. B. No.
Admiralty Division.

A.B. v. C.D.

Take notice that the defendant has paid into Court £ , and says that that sum is enough to satisfy the plaintiff's claim [or the plaintiff's claim for, &c.].

To Mr. X.Y.,

The plaintiff's solicitor.

Z.,

Defendant's solicitor.

FORM 6.

Acceptance of Sum paid into Court.

In the High Court of Justice. 1875. B. No.
Admiralty Division.

A.B. v. C.D.

Take notice that the plaintiff accepts the sum of £ , paid by you into Court in satisfaction of the claim in respect of which it is paid in.

FORM 7.

Form of Interrogatories.

In the High Court of Justice. 1874. B.No.
Admiralty Division.

Between A.B., Plaintiff,
and

C.D., E.F., and G.H., Defendants.

Interrogatories on behalf of the above-named [plaintiff, or defendant C.D.] for the examination of the above-named [defendants E.F. and G.H., or plaintiff].

1. Did not, &c.

2. Has not, &c.

&c. &c. &c.

[The defendant E.F. is required to answer the interrogatories numbered .]

[The defendant G.H. is required to answer the interrogatories numbered .]

APPENDIX.

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FORM 8.

Form of Answer to Interrogatories.

1874. B. No.

In the High Court of Justice.
Admiralty Division.

Between *A.B.* Plaintiff,
and
C.D., E.F., and G.H. . . . Defendants.

The answer of the above-named defendant *E.F.* to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named *E.F.*, make oath and say as follows:—

FORM 9.

Form of Affidavit as to Documents.

1874. B. No.

In the High Court of Justice,
Admiralty Division.

Between *A.B.* Plaintiff,
and
C.D. Defendant.

I, the above-named defendant *C.D.*, make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That [*here state upon what grounds the objection is made, and verify the facts as far as may be*].

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on [*state when*].

6. That [*here state what has become of the last-mentioned documents, and in whose possession they now are*].

7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

APPENDIX.

FORM 10.

Form of Notice to produce Documents.

In the High Court of Justice.
Admiralty Division.

Title.

Take notice that the [plaintiff or defendant] requires you to produce for his inspection the following documents referred to in your [statement of claim, or defence, or affidavit, dated the day of A.D.].

[Describe documents required.]

X. Y.,

Solicitor to the

To Z.,
Solicitor for

FORM 11.

Form of Notice to inspect Documents.

In the High Court of Justice.
Admiralty Division.

Title.

Take notice that you can inspect the documents mentioned in your notice of the day of A.D. [except the deed numbered in that notice] at my office on Thursday next, the instant, between the hours of 12 and 4 o'clock.

Or, that the [plaintiff or defendant] objects to giving you inspection of the documents mentioned in your notice of the day of A.D. , on the ground that [state the ground]:—

FORM 12.

Form of Notice to admit Documents.

In the High Court of Justice.
Admiralty Division.

A.B. v. C.D.

Take notice that the plaintiff [or defendant] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [or plaintiff], his solicitor or agent, at , on , between the hours of ; and the defendant [or plaintiff] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

To E.F., solicitor [or agent] for defendant [or plaintiff].

G.H., solicitor [or agent] for plaintiff [or defendant].

APPENDIX.

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[Here describe the documents, the manner of doing which may be as follows :—]

ORIGINALS.

Description of Documents.	Dates.
Letter—defendant to plaintiff	March 1, 1848.
Policy of insurance on goods by ship <i>Isabella</i> , on voyage from Oporto to London	December 3, 1847.
Memorandum of agreement between <i>C. D.</i> , captain of said ship, and <i>E. F.</i>	January 1, 1848.
Bill of exchange for £100 at three months, drawn by <i>A. B.</i> on and accepted by <i>C. D.</i> , indorsed by <i>E. F.</i> and <i>G. H.</i>	May 1, 1849.

COPIES.

Description of Documents.	Dates.	Original or Duplicate served, sent, or delivered, when, how, and by whom.
Letter—plaintiff to defendant	February 1, 1848 .	Sent by General Post February 2, 1848.
Notice to produce papers	March 1, 1848 .	Served March 2, 1848, on defendant's attorney by <i>E. F.</i> of —
Record of a judgment of the Court of Queen's Bench in an action, <i>J. S. v. J. N.</i>	Trinity Term, 10th Vict.	

* No. 4.—*Præcipe for Warrant.*

187 . No.

In the High Court of Justice.
Admiralty Division.

Between [state title of cause] *A. B.*, plaintiff, and *C. D.*, defendant.
Ship, *E. F.*

I , solicitor for the (state whether plaintiff or defendant), in this action pray a warrant to arrest (state name and nature of property),
and there being no caveat against the issue thereof outstanding.

Dated the day of 187 .

[To be signed by the solicitor, or by his clerk for him.]

* The Forms down to and including No. 58, are those which were made under the Rules of 1859, and which are still in force in some cases with slight alterations.

APPENDIX.

No. 20.—*Præcipe for Notice of Bail.*

[Year] [Letter] No.

In the High Court of Justice.

Admiralty Division.

[State title of cause.]

I, A. B., solicitor for the [state whether plaintiff or defendant], tender the under-mentioned persons as bail on behalf of [state the name, address, and description of the party for whom bail is to be given], in the sum of [state the sum in letters] pounds to answer judgment in this cause (if for costs add, so far as regards costs).

Names, Addresses and Descriptions of	
Sureties.	Referees.

1. _____	_____
2. _____	_____

Dated the _____ day of _____ 18 .

[To be signed by the solicitor, or by his clerk for him.]

[The names of bankers should, if possible, be given as referees.]

No. 21.—*Notice of Bail.*

[Year] [Letter] No. .

In the High Court of Justice.

Admiralty Division.

[State title of cause.]

Take notice, that A. B., solicitor for the [state whether plaintiff or defendant], tenders the under-mentioned persons as bail on behalf of [state name, address, and description of the party for whom bail is to be given], in the sum of [state the sum in letters] pounds, to answer judgment in this action (if for costs add, so far as regards costs).

Names, Addresses and Descriptions of	
Sureties.	Referees.

1. _____	_____
2. _____	_____

Dated the _____ day of _____ 18 .

G. H., Marshal.

No. 22.—*Marshal's Report as to the Sufficiency of Proposed Bail.*

[Year] [Letter] No.

In the High Court of Justice.

Admiralty Division.

[State title of cause.]

I hereby report that I have made diligent inquiry and certified myself that [state names, addresses, and descriptions of the two sureties] the proposed bail on behalf of [state name, address, and description of the party for whom bail is to be given], to answer judgment in this cause (if for costs add, so far as regards costs) are respectively sufficient sureties for the sum of [state the sum in letters] pounds.

Dated the _____ day of _____ 18 .

G. H., Marshal.

No. 23.—*Præcipe for Bail Bond.*

[Year] [Letter] No.

In the High Court of Justice.
Admiralty Division.

[State title of cause.]

I, A. B., solicitor for the [state whether plaintiff or defendant], pray a bail bond for the signature of the sureties named in the annexed notice of bail and report of the marshal, left hereunto.

Dated the day of 18 .

[To be signed by the solicitor, or by his clerk for him.]

No. 24.—*Bail Bail.*

[Year] [Letter] No.

In the High Court of Justice.
Admiralty Division.

[State title of cause.]

Whereas an action is now pending in the Admiralty Division of the High Court of Justice, between A. B., plaintiff, and C. D., defendant. Now therefore we and hereby jointly and severally submit ourselves to the jurisdiction of the said Court, and consent that, if he the said shall not pay what may be adjudged against him in the said cause with costs, execution may issue forth against us, our heirs, executors and administrators, goods and chattels, for a sum not exceeding pounds.

[Signatures of sureties.]

This bail bond was signed by the
said and the sure-
ties, the day of }
18 .

Before me .

[To be signed before the registrar, or one of the clerks in the
registry, or before a commissioner.]

No. 25.—*Præcipe for Commission to take Bail.*

[Year] [Letter] No.

In the High Court of Justice.
Admiralty Division.

[State title of cause.]

I, A. B., solicitor for the [state whether plaintiff or defendant], pray a commission to take bail on behalf of [state name, address and description of the person for whom bail is to be given], in the sum of [state the sum in letters] pounds, to answer judgment in this cause (if for costs add, so far as regards costs); the said commission to be addressed to

Dated the day of 18 .

[To be signed by the solicitor, or by his clerk for him.]

No. 26.—*Commission for Bail.*

187 . No.

In the High Court of Justice.

Admiralty Division.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To all and singular commissioners to administer oaths in the Supreme Court of Judicature, greeting. Whereas in an action pending in the Admiralty Division of our High Court of Justice between

plaintiff, and defendant, bail is required to be taken on behalf of , in the sum of pounds, to answer judgment in the said action

We therefore hereby authorize you to take such bail on behalf of the said from two sufficient sureties, who may be produced before you for that purpose, upon the bail bond hereto annexed, and to swear the said sureties to the truth of the annexed affidavits as to their sufficiency.

And we command you, upon the said bail bond and affidavits being duly executed and signed by the said sureties, to transmit the same, attested by you, into the principal registry of the Admiralty Division of our said Court.

Given at London, under the seal of our said Court, the day of 187 .

Taken out by

The Form of Oath to be administered to each of the Sureties.

You swear that the contents of the affidavit to which you have subscribed your name are true

So help you God.

No. 27.—*Standing Commission to take Bail.*

[Year] [Letter] No.

In the High Court of Justice.

Admiralty Division.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To , greeting. Whereas the Judge of the Admiralty Division of our High Court of Justice has decreed a commission to be issued unto you authorizing you to take bail in any action in our said Court: We therefore hereby authorize you, until this commission be revoked, to take bail in any cause or causes in our said Court from any sufficient sureties who may at any time be produced before you for that purpose, and to swear them to the truth of the affidavits as to their sufficiency in that behalf. And we command you, upon the bail bond and affidavits as to the sufficiency of the sureties in any cause being duly executed and signed by the sureties, to transmit the same attested by you into the registry of our said Court.

Given at London, under the seal of our said Court, the day of in the year of our Lord 18 .

E. F., Registrar.

Standing commission to take bail.

Issued to .

No. 28.—*Affidavit of Justification.*

[Year] [Letter] No.

In the High Court of Justice.

Admiralty Division.

[State title of cause].

I [state name, address, and description], one of the proposed sureties for [state name, address, and description of the person for whom bail is to be given], make oath and say, that I am worth more than the sum of [state the sum in letters in which bail is to be given] pounds after the payment of all my debts.

On the day of 18 the }
 said was duly sworn to the } *Signature of surety.*
 truth of this affidavit, at

Before me,
 Commissioner.

No. 29.—*Præcipe for Release.*

[Year] [Letter] No.

In the High Court of Admiralty of England.

Admiralty Division.

[State title of cause.]

I, A. B., solicitor for the [state whether plaintiff or defendant] in this action pray a release of [state name and nature of property] from the arrest effected by virtue of a warrant issued from the Registry of the said Division in this action, and there being no caveat against the release thereof outstanding.

Dated the day of 18 .

[To be signed by the solicitor, or by his clerk for him.]

No. 30.—*Release.*

187 . [Letter] No.

In the High Court of Justice.

Admiralty Division.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To the Marshal of the Admiralty Division of our High Court of Justice, officer of our Supreme Court, and to all and singular his substitutes, greeting. We do hereby command you to release from the arrest effected by virtue of our warrant issued in this action, upon payment being made to you of all costs, charges, and expenses attending the care and custody of the property whilst under arrest in the said action.

Given at London, under the seal of our said Court, the
 day of , 187 .

Taken out by

No. 31.—*Præcipe for Caveat Release.*

In the High Court of Justice. [Year] [Letter] No.
Admiralty Division.

[*State title of cause.*]

I, A. B., solicitor for the plaintiff in an action pending in the Admiralty Division of the High Court of Justice between [*state parties*], pray a caveat against the release of the [*state name and nature of property*].

Dated the day of 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 32.—*Præcipe for Caveat Warrant, by Defendant.*

In the High Court of Justice.

Admiralty Division.

[*State title of cause.*]

I [*state name, address, and description*], hereby undertake to enter an appearance in any action that may be commenced in the Principal Registry of the Admiralty Division of the High Court of Justice, in which the plaintiff is entitled to arrest [*state name and nature of the property*], and within three days after I shall have been served with a writ of summons in any such action to give bail therein in a sum not exceeding [*state amount for which the undertaking is given*] pounds or to pay such sum into the aforesaid registry. And I consent that all instruments and other documents in such action may be left for me at [*state address*].

Dated the day of 187 .

[*To be signed by the party, or by his solicitor.*]

* *Præcipe for Caveat Warrant by Plaintiff, in case of a Counter Claim.*

In the High Court of Justice. [Year] [Letter] No.

Admiralty Division.

Between plaintiffs, and defendants.

I [*state name, address, and description*], hereby undertake within three days after I shall have been served with a notice of any counter claim herein in respect of which the defendant is entitled to arrest [*state name and nature of the property*] to give bail to answer such counter claim in a sum not exceeding [*state amount for which the undertaking is given*] pounds or to pay such sum into the Principal Registry of the Admiralty Division of the High Court of Justice.

Dated the day of 187 .

[*To be signed by the party, or by his solicitor.*]

No. 33.—*Petition.*[†]

In the High Court of Justice. [Year] [Letter] No.

Admiralty Division.

The [*state title of cause*], master.

A. B., solicitor for the plaintiff in an action pending in the Admi-

* This Form issues from the registry.

† This and the three following forms are still required for petitions on protest, and in objection to the registrar's report.

ralty Division of the High Court of Justice between [*state the parties*] says as follows [*here make the necessary statements, in short paragraphs, numbered consecutively*].

And the said A. B. prays [*here state the plaintiff's prayer*].

Dated the day of 18 .

No. 34.—*Answer.*

[*Year*] [*Letter*] No.

In the High Court of Justice.

Admiralty Division.

[*State title of cause.*]

C. D., solicitor for [*state name, address, and description*], the defendant in this action says as follows : [*here make the necessary statements, in short paragraphs, numbered consecutively*].

And the said C. D. prays [*here state the prayer of the defendant*].

Dated the day of 18 .

No. 35.—*Reply or any subsequent Pleading.*

[*Year*] [*Letter*] No.

In the High Court of Justice.

Admiralty Division.

[*State title of cause.*]

A. B., solicitor for the [*state whether plaintiff or defendant*], further says as follows : [*here make the necessary statements, in short paragraphs numbered consecutively*].

Dated the day of , 18 .

No. 36.—*Conclusion.*

[*Year*] [*Letter*] No.

In the High Court of Justice.

Admiralty Division.

[*State title of cause.*]

A. B., solicitor for the [*state whether plaintiff or defendant*], says that he does not plead further, and prays that the pleadings be concluded.

Dated the day of , 18 .

No. 37.—*Return as to Witnesses examined in London.*

[*Year*] [*Letter*] No.

In the High Court of Justice.

Admiralty Division.

[*State title of cause.*]

I, A. B., examiner, hereby certify as follows:—

(1.) On th day of , 18 , in the presence of the

proctors for the plaintiff and defendant [or in the absence of one or other of them, as the case may be], I administered an oath to and caused to be examined the following witnesses, who were produced before me on behalf of the [state whether plaintiff or defendant] to give evidence in this cause, viz :

John Thomas.

William Roe.

&c. &c.

(2.) On the day of , 18 , in the presence of the said proctors [or in the absence of one or other of them, as the case may be], I administered an oath to and caused to be examined the following witnesses, who were produced before me on behalf of the [state whether plaintiff or defendant], to give evidence in this cause, viz.

William Thomas,

&c. &c.

Dated the day of 18 .
G. H., Examiner.

No. 38.—*Præcipe for Commission to examine Witnesses.*

[Year] [Letter] No.

In the High Court of Justice.

Admiralty Division.

[State title of cause.]

I, A. B., proctor for the [state whether plaintiff or defendant], pray a commission for the examination of witnesses in this cause, decreed by the judge to be opened at on the day of , 18 , and to be addressed to [state name of the examiner or commissioner.]

[To be signed by the solicitor, or by his clerk for him.]

No. 39.—*Commission to examine Witnesses.*

[Year] [Letter] No.

In the High Court of Justice.

Admiralty Division.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To [state name and address of examiner or commissioner appointed], greeting. Whereas in an action pending in the Admiralty Division of our High Court of Justice between [state the parties] the judge of the said division has decreed a commission to be issued for the examination of witnesses concerning the truth of the matters at issue in the said cause: We therefore hereby authorize you, upon the day of , 18 , at , in the presence of the solicitors in the said cause, or in the presence of their or either of their lawfully appointed substitutes, or otherwise notwithstanding the absence of either of them, to swear the witnesses who shall be produced before you for examination in the said cause, and cause them to be examined, and their depositions to be reduced into writing. We further authorize you to adjourn (if necessary) the said examinations from time to time and from place to

place, as you may find expedient. And we command you, upon the examinations being completed, to transmit the depositions and the whole proceedings had and done before you, together with this commission, to the registry of our said Court.

Given at London, under the seal of our said Court, the day
of , in the year of our Lord 18 .

E. F., Registrar.

Commission to examine witnesses.
Taken out by .

No. 40.—*Return to Commission to examine Witnesses.*

[Year] Letter] No.

In the High Court of Justice.

Admiralty Division.

[State title of cause.]

I, A. B., the examiner [or commissioner] named in the commission hereto annexed, bearing date the day of , 18 , hereby certify as follows:

(1.) On the day of , 18 , I opened the said commission at , and in the presence of the solicitors for the plaintiff and defendant [or in the absence of one or other of them, as the case may be] administered an oath to and caused to be examined the following witnesses, who were produced before me on behalf of the [state whether plaintiff or defendant] to give evidence in this cause, viz:

*John Thomas,
William Roe,
&c. &c.*

(2.) On the day of , 18 , I proceeded with the examinations at the same place (or at some other place, as the case may be), and in the presence of the said solicitors administered an oath to and caused to be examined the following witnesses, who were produced before me on behalf of the [state whether plaintiff or defendant] to give evidence in this cause, viz:

*William Thomas,
&c. &c.*

Dated the day of , 18 .

G. H., Examiner or Commissioner.

No. 41.—*Writ of Subpoena.*

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to W. W. [names of all witnesses included in the subpoena], greeting. We command you that laying aside all and singular business and excuses you and every of you be and appear in your proper persons in the Admiralty Division of the High Court of Justice, before Sir Robert Phillimore, at Westminster, on the day of , by of the clock in the forenoon of the same day, to testify all and singular those things

which you or either of you know in a certain cause now depending in our High Court of Justice, between _____, and on that day to be tried; and this you or any of you shall by no means omit, under the penalty upon each of you of 100*l*.

Witness,

No. 42.—*Summons.*

[Year] [Letter] No.

In the High Court of Justice.
Admiralty Division.

[State title of cause.]

Let the _____ solicitor, attend me at my chambers, at Westminster, on _____ next, at _____ of the clock to show cause why [state the subject matter of the summons].

Dated the _____ day of _____, 18 .

No. 48.—*Præcipe for Commission of Appraisement and Sale.*

[Year] [Letter] No.

In the High Court of Justice.
Admiralty Division.

[State title of cause.]

I, A. B., solicitor for the [state whether plaintiff or defendant], pray a commission for the appraisement and sale of the [state name and nature of property], which was decreed by the Court on the _____ day of _____ 18 .

Dated the _____ day of _____ 18 .

[To be signed by the solicitor, or by his clerk for him.]

No. 49.—*Commission of Appraisement and Sale.*

[Year] [Letter] No.

In the High Court of Justice.
Admiralty Division.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To the marshal of the Admiralty Division of our High Court of Justice, officer of our Supreme Court, and to all and singular his substitutes, greeting. Whereas in an action pending in our said High Court between [state plaintiffs and defendants], the judge of our said High Court of Justice has decreed the vessel [state name of ship], to be appraised and sold: We therefore hereby authorize and command you to reduce into writing an inventory of the said _____, and having chosen one or more experienced person or persons, to swear him or them to appraise the same according to the true value thereof, and upon a certificate of such value having been reduced into writing to cause the said _____ to be sold by public auction for the highest price, not under the appraised value thereof, that can be obtained for the same. And we further command you, immediately upon the sale being completed, to pay the proceeds

arising therefrom into the principal registry of the said Admiralty Division, and to file the certificate of appraisement signed by you and the appraiser or appraisers, and an account of the sale signed by you together with this commission.

Given at London, under the seal of our said Court, the day
of in the year of our Lord 18 .
Commission of appraisement and sale.
Taken out by .

E. F., Registrar.

No. 50.—*Præcipe for Order for Payment of Money out of Court.*

[Year] [Letter] No.

In the High Court of Justice.
Admiralty Division.

[State title of cause.]

I, A. B., solicitor for the [state whether plaintiff or defendant], pray an order for the payment out of Court to [state to whom] of the sum of [state the sum in letters], being the [state the nature of the claim] decreed to be paid to

Dated the day of 18 .

[To be signed by the solicitor, or by his clerk for him.]

No. 51.—*Order for Payment of Money out of Court.*

[Year] [Letter] No.

In the High Court of Justice.
Admiralty Division.

[State title of cause.]

I, J. K., judge of the Admiralty Division of the High Court of Justice, hereby order payment of the sum of , being the amount of , to be made to , out of the now remaining in the registry of the said Court.

Dated the day of 18 .

J. K., Judge.
Witness, E. F., Registrar.

No. 54.—*Præcipe for Monition to bring in Certificate of Ship's Register.*

[Year] [Letter] No.

In the High Court of Justice.
Admiralty Division.

[State title of cause.]

I, A. B., solicitor for the [state whether plaintiff or defendant], pray a monition against [state name, address, and description] to bring into the registry of the Court the certificate of registry belonging to the above-named or vessel .

Dated the day of 18 .

[To be signed by the proctor, or by his clerk for him.]

attendance of [*Trinity Masters or Nautical Assessors*], may be requested at the hearing of this [*action or appeal*].

Dated the day of 187 .

[*To be signed by the solicitor, or by his clerk for him.*]

FORM AND PRECEDENT OF PRELIMINARY ACT IN ACTION FOR
DAMAGE BY COLLISION.

1877.—[*Letter, and Number.*]

[*Title.*]

Preliminary Acts.

	ON BEHALF OF THE OWNERS OF THE <i>S. G. G. Thompson.</i>	ON BEHALF OF THE OWNERS OF THE <i>Pactolus.</i>
	I. The <i>S. G. G. Thompson.</i> A. B., Master. The <i>Pactolus.</i> C. D., Master.	I. The ship <i>Pactolus</i> , C. D., Master. The <i>S. G. G. Thompson.</i> A. B., Master.
The names of the vessels which came into collision, and the names of their masters.		
Time of collision.	II. About 11.40 a.m. on December 29, 1876.	II. About 11 a.m. on December 29, 1876.
Place of collision.	III. The river Mersey, a short distance be- low the landing- stage.	III. Mid-river, off the Waterloo Dock, in the river Mersey.
Direction of wind.	IV. No wind, or scarcely any—south south- east.	IV. About S. E.
State of the weather.	V. Thick fog, wind having died sud- denly away.	V. Hazy.
State and force of the tide.	VI. Ebb, force about five knots per hour.	VI. Ebb, making about 4 knots an hour.
The course and speed of the vessel, when the other was first seen.	VII. Drifting with the tide. Head inclined to Cheshire shore.	VII. The <i>Pactolus</i> was at anchor, lying head to tide.

	VIII.	VIII.
The lights, if any carried by her.		None.
Distance and bearing of the other vessel when first seen.	IX. About three points on starboard bow. About a cable's length off.	IX. About five or six ship's lengths off, and on the port bow of the <i>Pactolus</i> .
The lights, if any of the other vessel, which were first seen.	X.	X. None.
Whether any lights of the other vessel, other than those first seen, came into view before the collision.	XI.	XI. None.
What measures were taken, and when, to avoid the collision.	XII. Helm kept a starboard and <i>Pactolus</i> hailed loudly several times to starboard her helm and sheer to Liverpool side.	XII. The helm of the <i>Pactolus</i> was starboarded as soon as she was hailed from the <i>S. G. G. Thompson</i> to starboard.
The parts of each vessel which first came in contact.	XIII. Starboard fore rigging of <i>S. G. G. Thompson</i> , chain and stem of <i>Pactolus</i> . The 18th day of January, 1877. <i>D. H. & D.</i> Plaintiff's Solicitors.	XIII. The stem of the <i>Pactolus</i> and the starboard side of the <i>S. G. G. Thompson</i> . The 30th day of January 1877. <i>B. & Co.</i> , Defendant's Solicitors.

APPENDIX V.

MISCELLANEOUS FORMS AND PRECEDENTS.

FORMS AND PRECEDENTS OF AFFIDAVITS TO OBTAIN ARREST OF SHIP.

1.

IN ACTION OF SALVAGE.

(Title.)

I., *A. B.*, the solicitor for the above-named plaintiff, make oath and say as follows :—

1. This action is instituted by *C. D.* of _____, shipowner.

2. On the _____ day of _____, 187____, the steamship *E. F.* of which the plaintiff is the owner, whilst on a voyage from *X.* to *Z.*, sighted a disabled steamer flying signals of distress.

3. The said steamship in distress proved to be the *G. H.*, of which the defendants are the owners, and the *E. F.* on the _____ day of _____, rendered salvage services to the said *G. H.*, at great risk to herself and to those on board, and received considerable damage in so doing. For the said services and damage the plaintiffs have claimed salvage and a sum in respect of the damage received by the said steamship *E. F.* from the defendants.

4. The owners of the said steamship *G. H.*, against which a warrant of arrest is now claimed have refused to pay to the plaintiff any sum by way of salvage reward or to make good the damage received by the said steamship *E. F.* whilst rendering such services as aforesaid.

5. The aid and process of this honourable Court are required to enforce payment of a sum as salvage reward and for the damage aforesaid.

2.

IN ACTION FOR DISTRIBUTION OF SALVAGE.

(Title.)

I., *A. B.*, of _____, the solicitor to the above named plaintiffs, make oath and say as follows :—

1. This action is instituted by *C.D.*, *E.F.*, and *G.H.*, able seamen, who on the day of , 187 , were serving on board the ship *A. B.*

2. I am informed and believe that on the said day of , the ship *A. B.* rendered salvage services to the steamship *C. D.*, and the plaintiffs were engaged in their capacities aforesaid on board the said ship *A. B.* during the rendering of such services.

3. A sum of £ has been paid by the owners of the *C. D.* to the owners of the *A. B.* for the salvage services rendered by the *A. B.* to the *C. D.*, and has been accepted by them in respect of such services.

4. The above named defendants, *L.M.* and *N.O.*, shipowners of , are the registered owners of the said ship *A. B.*, and have duly received such sum as aforesaid of which they have now possession.

5. The above named defendants, *L.M.* and *N.O.*, have not paid any part of such sum to the plaintiffs in respect of the services rendered by them on board the *A. B.* on the day of aforesaid, and refuse to pay to the plaintiffs an equitable proportion of such sum.

6. The aid and process of this honourable Court are required to enforce payment to the plaintiffs of an equitable proportion of the above named sum of £ .

3.

IN ACTION OF TOWAGE.

(Title.)

I, *A.B.*, solicitor for the above named plaintiffs, make oath and say as follows:—

1. The plaintiffs are the owners of the tug *E.*, and reside at *L.*

2. I am informed and believe that on the day of , 187 , the master of the said tug *E.* agreed to tow the ship *L.*, now sought to be arrested from *F.* to *G.* for the sum of £ .

3. The tug *E.* towed the said ship from *F.* to *G.*, but the owners of the said ship *L.* have refused to pay the said sum of £ , and the said sum still remains unpaid.

4. The aid and process of this honourable Court are required to obtain payment of the said sum of £ .

4

IN ACTION OF DAMAGE.

(Title.)

I, *J.C.*, of Liverpool, in the County of Lancaster, clerk to Messrs. *B. & Co.*, solicitors for the plaintiffs in this action [or I, *A.B.*, the above named plaintiff] make oath and say:—

1. This action is brought by *A.B.* [or one *A.B.*], shipowner of Liverpool in the County of Lancaster.

2. I am informed and verily believe that on the 20th day of February last, a collision, the subject of this action, occurred in the Salisbury Dock, Liverpool, between the above named brig or vessel *Kate*, of which the arrest is now desired, and the *S. S. Athlete*, whereby the latter vessel sustained considerable damage [or was sunk].

3. The owners of the said brig or vessel *Kate*, as I am further informed and believe, reside out of the jurisdiction of this honourable Court, and the said claim remains unpaid [or I have made application for compensation in respect of the said damage to, [or loss of, the said steamship to the owners of the said brig, but they have refused and decline to pay such compensation].

4. The said brig or vessel *Kate* is now advertised for sale by public auction.

5. The aid and process of this honourable Court are required to enforce payment of the plaintiffs [or my] claim in respect of the said collision.

Sworn the day of , 1877.
Before, &c.

5.

DAMAGE TO CARGO.

(Title.)

I, *A.B.*, solicitor to the above named plaintiff, make oath and say as follows :—

1. This action is instituted by *C.D.*, of *L.*, merchant.

2. On the 36th day of March, 1877, Messrs. *G. & Co.*, shipped at Rangoon on board the said ship *P.*, now sought to be arrested, a cargo of rice to be carried to London, for which the master thereof signed bills of lading.

3. The plaintiff is the indorsee of one of such bills of lading.

4. During the said voyage, the said cargo suffered damage and was delivered to the plaintiffs in a damaged state.

5. The plaintiffs have claimed damages from the defendants in respect of such injury as aforesaid, but the said claim has not been paid by the defendants.

6. The aid and process of this honourable Court are required to enforce payment of the said claim.

6.

IN AN ACTION FOR WAGES AND DISBURSEMENTS.

(Title.)

I, *A.B.*, the above named plaintiff [or solicitor to the above named plaintiff] make oath and say :—

1. This action is brought by me [or by *A.B.*], a master mariner, to obtain the payment of wages due to me [or to him] as master of the above named vessel *C.D.*, and on account of disbursements made by me [or by him] as such master as aforesaid, from the 20th of August to the 9th of November. The said claim amounts to the sum of £ .

2. The said vessel *C.D.* is a Spanish ship, and notice of this action has been given by me [or by my solicitor, or by me the solicitor for the above named plaintiff *T.*] to Mr. *E.F.*, Consul-General of Spain [this paragraph is only necessary when the ship which is sought to be arrested is a foreign vessel].

3. The owners of the said vessel have not satisfied my said claim [or the claim of the plaintiff] herein.

4. The aid and process of this honourable Court are required to enforce payment of my [*or of the plaintiff's*] claim for such wages and disbursements as aforesaid.

Sworn the day of , 1877.
Before, &c.

7.

IN ACTION OF MORTGAGE.

I, *A.B.*, banker, of *L.*, the plaintiff in the above-named action, make oath and say as follows:—

1. On the day of , 187 , one *M.*, the sole owner of the ship *X.*, now sought to be arrested by deed, mortgaged the said ship to me as security for a sum of £ .

2. The said sum of £ has not been repaid to me by the said *M.*

3. In consequence of the default of the said *M.* in repayment of the said sum of £ , I am entitled to receive possession of the said ship under the provisions of the said deed.

4. The aid and process of this honourable Court are required to obtain possession of the said ship.

8.

IN ACTION OF BOTTOMRY.

(*Title.*)

I, *A.B.*, merchant, the above-named plaintiff, make oath and say as follows:—

1. I am the assignee [*or the holder, or the payee*] of a bottomry bond, for £ on the ship *O.*, the arrest of which is now sought, dated the day of , 187 , payable to Messrs. *H. & Co.* or their assignees, or order or indorsees on the arrival of the said ship at a port of discharge in the United Kingdom. A copy of the said bond forms an exhibit hereto.

2. The said ship arrived at the port of *L.*, on the day of .

3. The said bond still remains unpaid, and this action is brought in respect of the sum due on the said bond.

4. The aid and process of this honourable Court are required to enforce payment of the said bond.

9.

IN ACTION FOR NECESSARIES.

(*Title.*)

I, *A.B.*, the solicitor for the above-named plaintiffs, make oath and say as follows:—

1. The plaintiffs, Messrs. *C. D. & Co.*, are engineers and iron-founders of Liverpool.

2. The plaintiffs executed certain necessary work for and supplied with certain necessary materials the ship *X.*, belonging to the port of London, whilst she was lying at Liverpool to the value of £ . . .

3. The said sum of £ . . . still remains due and owing to the plaintiffs.

4. The aid and process of this honourable Court are required to enforce payment of the said claim.

10.

IN ACTION OF POSSESSION.

(Title.)

I, *A.B.*, of . . . , broker, the above-named plaintiff, make oath and say as follows :—

1. On the . . . day . . . , 187 . . . , an agreement was entered into between myself and one *C.D.*, whereby the said *C.D.* transferred to me in consideration of the sum of £ . . . , 40-64th shares in the ship or vessel, and of which the arrest is now sought.

2. The said *C.D.* disposed of the remaining 24-64th shares in the said ship or vessel to the defendant.

3. The defendant refuses to permit the said ship or vessel to leave the port of . . . , and to fulfil a charter party entered into by the plaintiff with one *G.* in respect of the said ship or vessel.

4. The aid and process of this honourable Court are required to obtain possession of the said ship or vessel.

11.

FORM OF A CLAIM ON A REFERENCE BEFORE REGISTRAR AND MERCHANTS.

In the High Court of Justice.
Admiralty Division.

Claim.

An account of the losses of the owners, master, and crew of the late steamship *A. B.*, by reason of the said steamship having been run down and sunk by the steamship *T.* on the 14th day of October, 1877.

	£	s.	d.
Ship.			
1. The value of the late steamship <i>A. B.</i>	18,000	0	0
Contracts.			
2. Loss on contracts for the use of the <i>A. B.</i>	730	0	0
Cargo.			
3. Value of two cases of goods	30	0	0
Crew's effects :—			
4. George Dixon, master	43	9	6
5. Thomas Smith, mate	8	10	0
6. Frederick Jones, seaman	5	10	0

12.

AFFIDAVIT OF VALUE OF SHIP TOTALLY LOST.

I, A.B., of L. [*state trade or employment*], make oath and say as follows :—

1. I was well acquainted with the late screw steamship X. Y., of L. I inspected her on her completion in , 18 , and afterwards at the commencement of the voyage she was performing when she was run down on the day of , 18 .

2. The said steamship X. Y. was built and completed at L. aforesaid, in the month of , 18 . She was tons gross register, worked by engines of horse power, and at the time she was lost she was classed at Lloyd's.

3. The market value of the said steamship at the time of her loss was £ at least.

Sworn by the said A.B. at , this day of } A.B.
, before me, R.B. }
A Commissioner, &c.

13.

AFFIDAVIT OF LOSS OF PROPERTY ON BOARD A SHIP TOTALLY LOST.

I, A.B., of W., in the county of D. [*state employment*], make oath and say as follows :—

1. That I was [*state employment*] on board the X. Y. at the time when she was sunk by the T.

2. The schedule hereunto annexed and marked by me contains a correct list of [*state the nature of the lost articles*] and other articles belonging to me, and on board the said steamship X. Y. at the time she was so sunk as aforesaid.

3. The whole of the said wearing apparel mentioned in the said schedule were entirely lost in the said steamship X. Y.

4. The several amounts set forth in the said schedule were the true value of the articles (opposite to which they are placed) at the time they were lost as aforesaid, to the best of my knowledge, information and belief.

Sworn by the said A.B. at , this day of } A.B.
, before me, R.B., }
A Commissioner, &c.

Exhibit annexed.

List of clothes lost on board the X. Y. belonging to A. B.

	£	s.	d.
1 Pilot cloth jacket	1	10	0
3 Flannel shirts	1	7	0
	2	17	0

This is the schedule referred to in the affidavit of A.B.

Sworn before me this day of . } A.B.
R.B., }
A Commissioner, &c.

14.

AFFIDAVIT AS TO AMOUNT OF FREIGHT DUE TO SHIPOWNER.

(Title.)

I, *A.B.*, of _____, broker, make oath, and say as follows:—

1. I am the agent for the owner of the above-named vessel.

2. The said vessel was abandoned at sea in the month of _____, when on a voyage from _____ to _____, and was afterwards brought to _____, where she was taken possession of by my agent on behalf of her owner, and it was arranged with the alleged salvors that she should be brought to _____, which was done.

3. The exhibit hereunto annexed, marked No. 1, is a statement of the freight due upon the cargo laden on board the said vessel on her arrival at the port of _____. The sum of £ _____ therein mentioned is the gross value of the said freight. The necessary expenses of realizing the said freight in _____, amount to £ _____, as shown by the said exhibit No. 1, and the expenses incurred at [port of loading], amount to £ _____, making, to be deducted from the said gross value, the sum of £ _____, and the net value of the said freight is £ _____, and no more.

4. The exhibit hereunto annexed marked No. 2, is an account of the expenses incurred by the master at [place to which ship was brought by salvors], and in bringing the said vessel thence to [port of discharge].

Sworn at _____, on the _____ day of _____, 18 _____,
before me, *C.D.* *A.B.*

Exhibit annexed.

This is the exhibit referred to in the above affidavit.

Sworn at _____, on the _____ day of _____, 18 _____.
before me, *C.D.* *A.B.*

15.

AFFIDAVIT AS TO VALUE OF CARGO.

(Title.)

I, *A.B.*, of _____, make oath, and say as follows:—

1. I am the consignee of the cargo now or lately laden on board the above-named ship.

2. At the time when the said vessel was arrested in this action she had on board [cargo].

3. In my opinion the outside value of the said cargo at the time of the said arrest, was £ _____, and no more, and if the same were compulsorily sold at the present time I believe that it would not realize more than the said sum of £ _____.

Sworn at _____, on the _____ day of _____, 187 _____.
Before me, *X.Y.* *A. B.*

cci

FORM OF NOTICE TO CONSUL OF INSTITUTION OF ACTION AGAINST
A FOREIGN VESSEL.

Sir,—I hereby give you notice that I have this day instituted an action in the High Court of Justice, Admiralty Division, against the above-named ship or vessel, now lying in the port of _____, to enforce payment of wages due to *A.B.*, ordinary seaman on board the said ship or vessel, on her voyage from _____ to _____.

I am, sir,

To the Hon. Solicitor to the above-named A.B.
Consul General of [state government].

PRECEDENTS OF TENDERS.

In the High Court of Justice. **1877. B. No.**
Admiralty Division.

Take notice that the defendants have paid into Court £ , and say that the said sum is enough to satisfy the plaintiffs claim for the wages and disbursements proceeded for, and the costs of the above action.

To Mr. X.Y.,
The plaintiff's solicitors.

(Title as above.)

Take notice that I [or we] have this day paid to the account of the registrar at the Bank of England [or into Court] the sum of £282, which we tender to A.B. in full satisfaction for the services proceeded for, and for the costs of the above action.

To *A.B.*,
The above-named plaintiff.

(Title as above.)

Take notice that I [or we] have this day paid into Court [or to the

account of the registrar at the Bank of England] the sum of £300 which I [or we] tender in full satisfaction for the services proceeded for exclusive of costs. And the defendant [or defendants] contends that the plaintiffs [or plaintiff] ought to be condemned in costs, or ought not to be allowed their costs on the ground [*here state reasons shortly*] that the action ought to have been instituted in the proper County Court [or that the services in question were towage services rendered under an agreement between the plaintiff and defendants, and therefore this action has been improperly brought].

Dated the day of , 1877.

(Signed)

Defendants' solicitor.

To Mr. X.Y.,

Plaintiff's solicitor.

The above precedents can be varied to suit the nature of the action and the circumstances of each case.

18.

NOTICE REJECTING A TENDER.

(Title.)

I hereby give you notice that the plaintiffs reject the tender of £ , made by you in this action.

Dated the day of , 18 .

To C.D.,

Solicitor for the defendants.

A.B.,

Solicitor for the plaintiffs.

19.

NOTICE OF THE PRODUCTION OF WITNESSES FOR EXAMINATION BEFORE AN EXAMINER.

(Title.)

Take notice that on the day of , 18 , at a.m., I shall produce before [examiner], at [place], A.B. and C.D., witnesses for examination in this action.

To G.H.,

Solicitor for the defendant.

E.F.,

Solicitor for the plaintiff.

20.

NOTICE THAT A PLAINTIFF PROCEEDS NO FURTHER IN AN ACTION.

(Title.)

I, the undersigned, hereby give notice to the defendant or his solicitor that I proceed no further in this action [*if the ship of the defendant is under arrest add*—and I hereby consent that the ship [name], her tackle, apparel, and furniture, and the cargo thereof, be immediately released without bail.

Dated the day of , 18 .

A.B.,

Solicitor for the plaintiff.

21.

NOTICE OF BAIL.

(Title.)

Take notice that bail to answer judgment in this action in the sum

cciii

22.

Dated the _____ day of _____, 18 ____.

A. B.,
Solicitor for the plaintiff.
C. D.,
Solicitor for the defendant.

APPENDIX.

25.

AGREEMENT AS TO TAKING EVIDENCE.

(Title.)

We, the undersigned solicitors for the plaintiff and defendant in this cause, hereby agree that the evidence in this action shall be taken before one or more examiner or examiners of this Court in his or their chambers or otherwise [or by affidavit as the case may be].

Dated the day of 18 .

A. B.,
Solicitor for the plaintiff
C. D.,
Solicitor for the defendant.

26.

FORM OF NOTICE OF MOTION FOR LEAVE TO PRODUCE FURTHER
EVIDENCE WHERE PARTIES HAVE AGREED THAT THE EVIDENCE
SHALL BE GIVEN BY AFFIDAVIT.

1877 [put letter and number].

In the High Court of Justice,
Admiralty Division.

Between A.B., plaintiff,
and
The owners of the ship or vessel *Magnet*.

No.

Take notice that we intend to apply by motion to the judge in chambers at Westminster on the , day of for leave to produce further evidence in support of the plaintiffs claim herein, namely the evidence either *vivâ voce* or by affidavit of , and we have this day filed in the Registry an affidavit of , in support of the said motion.

Dated

A.B.,
Solicitor for the above-named.

To Messrs. C. D. & Co.,
Defendants' solicitor.

27.

NOTICE OF OBJECTION TO ADMISSION OF PLEADINGS.

(Title.)

Take notice that I object to the [*state pleadings*], [or to the Report of the Registrar] being admitted in this action.

Dated the day of , 187 .

A.B.,
Solicitor for the

To C. D.,
Solicitor for the

28.

NOTICE OF OBJECTION TO TAXATION.

(Title.)

I, A.B., solicitor for the _____ hereby give notice that I object to the [*allowance or disallowance*] of the items hereunder specified by the Registrar of the Admiralty Division of the High Court of Justice on the taxation of the [*plaintiff's or defendants'*] bill of costs in this action.

[List to follow.]

29.

FORM OF CERTIFICATE OF SURVEY IN ACTION OF DAMAGES.

Fos. 10. No. 172.

The [name of ship proceeded against], survey of A.B. [name of injured ship].

Lloyd's Register of British and Foreign Shipping.

Liverpool, 11th 8th 187 .

This is to certify that the undersigned surveyor to this society, at the request of Messrs. *T. and Co.*, attended at _____, and subsequently at the _____, for the purpose of ascertaining the extent of damage done to the [*name of ship and master*], she having been in collision with the [*name of ship proceeded against*], on [*state when collision occurred*].

On examination, found the vessel had sustained damage about the bow to the following extent [*state the nature of the damage*].

The following work is necessary in order to make the vessel as efficient as before the accident, viz. [state the nature of the requisite repairs].

All the above enumerated damages and losses to be made good in order to make her complete and efficient.

(Signed)

A.B.

Charge [of survey] £

APPENDIX VI.

PRECEDENTS OF PLEADINGS AND BILLS OF COSTS.

PART I.

1.

FORMS OF HEADINGS APPLICABLE TO PLEADINGS.

18 . [Year.] [*Letter and number of action.*]
In the High Court of Justice.
Admiralty Division.

Writ Issued.

The [*name of ship*] (a).
Between [*state the names of plaintiff or plaintiffs in full*], plaintiffs,
and
[*State the names of defendant or defendants in full*], defendant (b).

Termination of Pleadings.

Delivered the day of , 18 , by , of
[*state address in full*], solicitors for the [*plaintiff or defendant*].

2.

STATEMENT OF CLAIM.

Salvage.

1. The *Rapid* is a pilot cutter belonging to the Island of Bryher, one of the Scilly Islands, of the value of £500, and was at the time of rendering the services hereinafter mentioned manned with a crew of eight hands, including Stephen Woodcock, her master.

2. The *O. and M.* is a six-oared gig, belonging to the Island of Saint Agnes, one of the Scilly Islands, of the value of £40, and was at the time of rendering the service hereinafter mentioned manned by a crew of six hands, including Obadiah Hicks and a licensed Trinity House pilot who was in command.

(a) If the cargo only be proceeded against the words "cargo ex. A" [*name of ship*] must be inserted.

(b) Sometimes in addition to or in place of the name of the plaintiff or defendant he is described as the owner of the ship or cargo, e.g.

The owners, masters, and crews of the pilot cutter	
<i>Rapid</i> , and the boats <i>Guinerve</i> and <i>Swift</i> . . .	Plaintiffs.
The owners of the cargo now or lately laden on	
board the steamship <i>Schiller</i> . . .	Defendants.

3. The *Guinevere* is a six-oared gig, belonging to the island of Saint Agnes, of the value of £40, and was at the time of rendering the services hereinafter mentioned manned with a crew of seven hands, including Stephen Hicks, her coxswain.

4. The *Swift* is a boat belonging to the Island of Saint Agnes, of the value of £15, and was at the time of rendering the said services manned by a crew of four hands, including Uriah Legg, her coxswain.

5. On Friday the 7th of May, 1875, shortly before midnight, the whistle of a steamer, and shortly after the report of a gun, were heard at the Island of Saint Agnes. At the time no particular notice was taken of these signals, as it had been the practice of many vessels to fire guns when passing the Scilly Islands during the night. At this time there was a very dense fog over the whole of the Scilly Islands and a fresh breeze from the south-west.

6. Some of the plaintiffs, however, having regard to the state of the weather, suspected that some vessel might be in danger, and accordingly at daybreak the plaintiffs, the crew of the *O. and M.*, started from the Island of Saint Agnes towards the Western Rocks.

7. About the same time the plaintiffs, the crew of the *Guinevere*, put off in her from Saint Agnes, and proceeded in the same direction. The weather at the time continued densely thick with fog, the wind was from S.W., and a very heavy sea was running through the rocks and breaking over the sunken ledges between which the boats had to pass before they could get outside, to such an extent as to greatly imperil the lives of those on board them. The wind increased as they went on. The fog shut out all land marks, and notwithstanding that many of them were licensed Trinity pilots, they had great difficulty in making their way.

8. On the same morning R. J. Ellis, one of the plaintiffs, being on the Island of Bryher, one of the Scilly Islands, saw three spars wash on shore where he then was, and about six a.m. he saw some broken deck planks floating in the water. He immediately summoned the plaintiffs, who with him formed the crew of the *Rapid*, got her under weigh and passed down the Channel between the Islands of Sampson and Bryher. In doing this the crew of the *Rapid* underwent the same difficulty and danger as those in the *O. and M.* and the *Guinevere*.

9. Uriah Legg was on the look-out hill above Smith's Sound, in the Island of Saint Agnes, between six and seven a.m. of the same morning, and saw a broken ship's lifeboat drifting to the southward through the Sound with something dark in it, which he could not distinguish for the fog. He immediately with the plaintiffs, who formed with him the crew of the *Swift*, launched the *Swift*, and proceeded as fast as possible in the direction where he had seen the lifeboat. They saw her close to Buccaba, and rowing up to her found that she belonged to the *Schiller* and that there was lying in her a passenger on board the *Schiller* groaning, benumbed with cold, and in a very weak state. The lifeboat was very much damaged, one half of her port side being clean gone. She was floating on a level with the water and the passenger was immersed in water except his head and shoulders and he had lost all power of speech.

10. It was impossible to tow the lifeboat in her waterlogged and damaged condition. So, notwithstanding the danger and difficulty of the operation, they succeeded, after shipping much water, in hauling the passenger into the *Swift*, and then rowed as fast as possible to Priglis, where they took him to the house of Hugh Hicks, one of the

plaintiffs, and took every measure to restore animation ; then put to bed, and when he had sufficiently recovered took him to the house of Saint Mary's.

11. In the meantime the other boats, *Rapid*, *O.* and *M.*, and *Guinevere*, were making the best of their way to the wreck of the *Schiller*. They went first to the reef of Meledgen, thence to Gorgan, Rosevean, Rosevere and Crebawithen, at none of which could they discover anything.

12. Shortly before seven a.m. the master and crew of the *Boat* which was then reaching in towards Minalto, heard cries but could see no one owing to the fog. They went in the direction from which the cries had been heard, which was between the rocks of Minalto and Minalto, the channel between which is filled with sunken rocks and ledges, and saw what they believed to be a man floating in the water. They tacked the *Rapid* to clear some sunken rocks from which the man was, and some of the plaintiffs went in their small punt through the broken water on the sunken rocks towards him. Whilst doing this they saw another man and went towards him first. They found him with his arm entangled in a becket, a piece of wood used in shipping, between the combings of the hatchway for the hatches to rest upon. They with difficulty got him clear of this, and then though he was a very large and heavy man and quite insensible, succeeded in getting him into their small punt. Whilst this was being done the heavy current and the wind had carried the punt among the sunken rocks and those on board her were in considerable danger. They put her head to the wind and signalled to the *Rapid* to come towards them, which she did notwithstanding the sunken rocks. They got the two boats as nearly as possible alongside, and put the rescued man (whose name was Rehderer) on board the *Rapid*. The punt was then rowed after the first man and found him in the broken boat filled with water the bottom of which was smashed and entirely gone. They picked him up and put him on board the *Rapid*.

13. The *Rapid* then made several tacks in order to see if there were more men in the water. But as none were seen, and Rehderer notwithstanding all the exertions of those on board, gave no sign of recovering, and the other man also required care, they rowed to Saint Mary's for medical assistance. Whilst so proceeding they passed quantities of boxes, clothes, and trunks which they did not stop to pick up, being anxious to obtain assistance for the two men. Having reached Saint Mary's they procured medical assistance and carried Rehderer to an hotel. He and the other man recovered.

14. Those on board the *O.* and *M.* in a break of the fog saw two masts of the *Schiller* on the Retarrier Reef, about three-quarters of a mile south-east by east of the Bishop Rock Lighthouse, and about three-quarters of a mile from where the *O.* and *M.* then was. They went towards her as fast as they could, shipping large quantities of water as they did so. On getting near they saw that one mast had gone by the board since they had first seen her and they heard shouts. They rowed through a large quantity of wreckage and got to a man in the water nearly lifeless, whom with difficulty they got on board. By the violence of the sea a piece of the wreckage was knocked up against the *O.* and *M.*, unshipping her rudder, which hindered them for some time. When this was put right they rowed up to six other men whom they saw struggling in the water, and succeeded after much difficulty in

rescuing four out of the six. The *Schiller* at this time was about a quarter of a mile distant, one mast still standing and the rigging crowded with people whose cries could be distinctly heard.

15. The *O. and M.* now had in her five hands beside her crew, and was completely unsafe and getting unmanageable owing to the quantity of water in her. The people they had rescued were in a lifeless condition, and the first one got on board apparently dying. Those on board the *O. and M.* were therefore bound for the preservation of the lives they had rescued and for the safety of their own to proceed at once to Saint Mary's. They rowed as fast as they could, the sea running so heavily that it was impossible to set sail until they got inside the neck of Crebawithen. They then set sail and got to Saint Mary's between seven and eight a.m. Took the five men to an hotel, the first one that was rescued, whose name was West, having to be carried there. All these men recovered.

16. Whilst proceeding to Saint Mary's the crew of the *O. and M.* took off their own clothes and wrapped up the rescued men in them and did all they could to promote warmth and circulation. Some of the crew had to be kept baling.

17. The crew of the *O. and M.* caught at Saint Mary's a steamboat going to Penzance with her steam already up. She immediately proceeded to the wreck taking the lifeboat and the *O. and M.* in tow. One of the crew of the *O. and M.* being a licensed Trinity House pilot went on board the steamboat and directed her to the wreck. The fog still continued very thick.

18. The sea was so heavy that the steamboat shipped large quantities of water and three planks of the *O. and M.*, two on one side and one on the other, were stove by the sea, so that she had to be cast off at Crebawithen and proceeded to Saint Mary's to repair. The *O. and M.* was the first boat at the wreck.

19. Those on board the *Guinevre* a little time after those on board the *O. and M.* saw the *Schiller* in a break of the fog, went up to her rowing through a quantity of wreckage and saw two men floating in the water. These with great difficulty and risk they succeeded in getting into the *Guinevre*. Both were in an exhausted condition.

20. The *Guinevre* being in danger of being stove by the wreckage, those on board her determined to proceed to Saint Mary's, both for the safety of the men they had on board and to get more assistance. They got to Saint Mary's about seven a.m. Some of the crew took the two men on shore. These men recovered. Stephen Hicks went to the office of the German Vice-Consul, the *Schiller* being a German vessel, and reported the disaster to him. This was the first intimation he had of it. Whilst going to Saint Mary's the *Guinevre* met two fishing boats. The crew of the *Guinevre* told those in the fishing boats of the accident and where to go. The fishing boats went and saved five other lives.

21. By the aforesaid services of the plaintiffs ten lives were saved, and the news of the disaster was first made known at Saint Mary's, the principal island, from whence other and further assistance was dispatched, and to the two fishing boats who saved five lives.

22. The services of the plaintiffs, the crews of the four boats, were rendered at great risk to themselves.

23. A small portion only of the stores and hull of the *Schiller* have been saved, but various valuable portions of her cargo have been saved. The total value of the property saved is £40,000.

The plaintiffs claim:—

1. Such an amount of salvage as to the Court may seem just.
2. Their costs of this action.
3. Such further or other relief as the nature of the case may require.

(Title.)

Statement of Defence.

1. The defendants admit the statements of fact in paragraphs 1 to 22, both inclusive of the statement of claim.

2. The services of the plaintiffs to the passengers of the *Schiller* were rendered at some risk to themselves, but not at great risk as alleged.

3. The said passengers were not the owners of the cargo proceeded against in this action, and the plaintiffs rendered no services to and did not attempt to save the said cargo or the owners thereof. Such cargo was saved under the circumstances in the next article mentioned.

4. Some time after the wreck of the *Schiller*, and after the vessel was partially broken up and with her cargo had sunk in deep water and had been abandoned by all concerned, the defendants determined to endeavour to raise six barrels of specie belonging to them, and which were known to be in the vessel's hold. The defendants thereupon engaged a staff of divers and workmen and worked for many weeks at great expense and with great uncertainty as to the success of their operations. During this time and so long as it remained doubtful whether the operations would not be altogether unprofitable, the plaintiffs did not profess to be interested in or to have a claim against the cargo in respect of which the operations were proceeding.

5. After many weeks of unsuccessful and unremunerative operations, the defendants succeeded in raising four of the barrels of specie and a portion of the contents of another barrel of the total value of £40,000, and the specie so saved was conveyed to Penzance. This specie is the cargo proceeded against in this action.

6. After the arrival of the specie at Penzance, the plaintiffs were induced by persons who had taken no part in the salvage services to put forward the claim made in this action, and they consented to do so upon being indemnified against liability for costs, and this action is being prosecuted in the plaintiffs' names under such indemnity.

7. Upon the arrival of the specie at Penzance it was arrested in two distinct actions by or in the names of certain of the plaintiffs in the present consolidated actions, and a third action was afterwards instituted against it on behalf of others of the said plaintiffs. The said actions were all commenced by the instructions of the same person acting or professing to act as agent for the plaintiffs and through the same solicitor, and the claim of the plaintiffs might and ought to have been put forward if at all in one action.

8. Numerous portions of the *Schiller* and of her tackle, apparel, and furniture had been saved and recovered by persons other than the defendants prior to the commencement of these actions, but the plaintiffs made no attempt to enforce a claim against such property.

9. The plaintiffs respectively have received, or are entitled to receive, and can upon application receive from the passengers to whom they rendered the said services, and from the owners of the *Schiller* and from the German Government, ample remuneration for their said services.

10. The *Schiller* at the time of her loss was a German ship, sailing under the German flag, and by the law of Germany the ship and the owners thereof and the passengers themselves are liable for the remuneration of the services in the statement of claim mentioned, and the defendants as owners of the cargo on board the said ship are not in the circumstances aforesaid liable for such remuneration.

(Title.)

Reply.

1. It is not true as stated in the 4th paragraph of the statement of defence that during the time therein mentioned the plaintiffs did not profess to be interested in or to have a claim against the cargo therein mentioned.

2. The several allegations in the 6th paragraph are untrue. It is further untrue as stated in the 7th paragraph that the actions therein mentioned were all commenced by the instructions of the same person, or that the claim of the plaintiffs might or ought to have been put forward in one action. The costs of the separate institutions of the two suits and one action are trifling. The several allegations in paragraphs 6 and 7 are immaterial.

3. It is not true that any portion of the *Schiller*, or of her tackle, apparel, or furniture, which were or are of any appreciable value, had or have been saved or recovered.

4. It is true as stated in paragraph 10 that the *Schiller* was at the time of her loss a German ship sailing under the German flag, but with this exception the several allegations in paragraphs 9 and 10 are untrue.

5. At the time of the render of the services stated in the statement of claim the *Schiller* was a ship stranded or in distress on the shore of a sea or tidal water situate within the limits of the United Kingdom, and the services so stated were rendered wholly or in part in British waters.

6. Except as hereinbefore appears, the plaintiffs join issue on the defendants' statement of defence.

(Title.)

Rejoinder.

The defendants join issue upon the several paragraphs of the reply.

3.

No. 26 (J. A.)

(Title.)

Statement of Claim.

1. The *Brazilian* is a screw steamer belonging to the port of New- Salvage of
castle, of the burden of 1,359 tons gross registered tonnage, and ship.
propelled by engines of 130-horse power, and at the time of the
rendering of the salvage services hereinafter mentioned she was
navigated by her master and a crew of twenty-four hands. She left
the port of Newcastle on the 27th of November, 1873, on a voyage

to Genoa, and thence by way of Palmaras and Aguilas to the Tr. and about 10 a.m. on the 26th of December, 1873, in the course of her homeward voyage, with a cargo of merchandise, she was off the coast of Portugal, the Island of Ons bearing about SE. by E. when those on board her sighted a disabled steamer about five points on their starboard bow, in-shore, flying signals of distress. A strong gale was blowing at the time, and there was a very heavy sea running.

2. The *Brazilian* at once made towards the disabled steamer, which proved to be the *Campanil*, the vessel proceeded against the action. She was heavily laden with a cargo of iron ore. The *Brazilian*, as she approached the *Campanil*, signalled to her, and the *Campanil* answered by signal that her engines had broken down. By this time the *Campanil* was heading in-shore, rolling heavily and shipping a large quantity of water. The *Brazilian* came under the lee of the *Campanil* and asked if she wanted assistance. Her master replied that he wanted to be towed to Vigo, as his vessel had lost her screw. The master of the *Brazilian* then asked those on board the *Campanil* to send him a hawser, and for a long time those on board the *Brazilian* made attempts to get a hawser from the *Campanil*, and exposed themselves and their vessel to great danger in doing so. The wind and sea rendering it impossible to get the hawser whilst the *Brazilian* was to leeward of the *Campanil*, the *Brazilian* went to windward and attempted to float lines by means of life buoys to the *Campanil*. During all this time the *Campanil* was quite unmanageable, and yawed about, and there was very great difficulty in manœuvring the *Brazilian*, so as to retain command over her and keep her near the *Campanil*. It was necessary to keep constantly altering the engines of the *Brazilian*, setting them ahead and reversing them quickly, and in consequence the engines laboured heavily and were exposed to great danger of being strained.

3. Whilst the *Brazilian* was endeavouring to float lines to the *Campanil*, the *Campanil* made a sudden lurch and struck the *Brazilian* on her port quarter, knocking in her port bulwark and rail, and causing other damage to the vessel. After many unsuccessful efforts by those on board the *Brazilian*, and after they had lost two life buoys and a quantity of rope, a hawser from the *Campanil* was at length made fast on board the *Brazilian*, and the *Brazilian*, with the *Campanil* in tow, steamed easy ahead. A second hawser was then got out and made fast with coir springs, and the *Brazilian* then commenced to tow full speed ahead, each hawser having a full scope of ninety fathoms.

4. The *Brazilian* made towards Vigo, which was about thirty-five miles distant; the vessels made about two knots an hour, the *Brazilian* keeping her engines going at full speed. The *Brazilian* laboured very heavily, and both vessels shipped large quantities of water.

5. About noon one of the tow-ropes broke, and both vessels were in danger of being driven ashore, broken water and rocks appearing to leeward, distant about two miles. After great difficulty the broken hawser was made fast again with a heavy spring of a number of parts of rope, and the *Brazilian* towed ahead under the lee of Ons Island.

6. Shortly afterwards the weather moderated and the sea went down a little, and the *Brazilian* was able to make more way, and about 7 p.m. the same day she towed the *Campanil* into Vigo harbour in safety.

7. The *Brazilian* was compelled to remain in harbour the next day to pay port charges and clear at the Custom House.

8. The coast off which the aforesaid services were rendered is rocky and exceedingly dangerous, and strong currents set along it, and but for the services rendered by the *Brazilian* the *Campanil* must have gone ashore and been wholly lost, together with her cargo, and in all probability her master and crew would have been drowned. No other steamer was in sight, and there was not any prospect of any other efficient assistance.

9. In rendering the said services the *Brazilian* and those on board her were exposed to great danger. Owing to the heavy sea, and the necessity of towing with a long scope of hawser there was great danger of fouling the screw of the *Brazilian*, and it required constant vigilance on the part of the master and crew to prevent serious accident. The master and crew of the *Brazilian* underwent much extra fatigue and exertion.

10. The damage sustained by the *Brazilian* in rendering the said services amounts to the sum of £150, and the value of the extra quantity of coal consumed in consequence of the said services is estimated at £16, and £4 1s. 5d. was paid by the owners of the *Brazilian* for harbour dues and other charges at Vigo.

11. The value of the *Campanil*, her cargo and freight, at the time of the salvage services were as follows, that is to say : The *Campanil* was of the value of £13,000, her cargo was of the value of £300, and the gross amount of freight payable upon delivery of the cargo laden on board her at Barrow-in-Furness was £675.

12. The value of the *Brazilian*, her freight and cargo, was about £25,060.

The plaintiffs claim :—

1. Such an amount of salvage as to the Court may seem just :
2. That the defendants and their bail be condemned in costs :
3. Such further or other relief as the nature of the case may require.

(*Tilla*.)

Statement of Defence.

1. The defendants say that upon the 22nd of December, 1873, the iron screw steamship *Campanil*, of the burden of 660 tons register gross, propelled by engines of 70-horse power, navigated by David Boughton, her master, and a crew of sixteen hands, left Porman, bound to Barrow-in-Furness, laden with a cargo of iron ore.

2. At about 8 a.m. of the 26th of December, whilst the *Campanil* was prosecuting her voyage, the shaft of her propeller broke outside the stern tube, and she lost her propeller. The *Campanil* was then brought to the wind, which was south by east, blowing fresh, and she proceeded under sail for Vigo, and continued to do so till about 9.30 a.m., when two steamships which had been for some time in sight, and coming to the northward, approached the *Campanil*. The ensign of the *Campanil* was hoisted, union up, as a signal to one of such steamships, which afterwards came to the *Campanil*, and proved to be the *Brazilian*, whose owners, master, and crew are the plaintiffs.

3. The *Brazilian* then signalled the *Campanil* and inquired what was the matter, and was signalled in reply that the *Campanil* had lost her propeller, and required to be towed to Vigo, upon which the

Brasilian signalled for the rope of the *Campanil* in order to take her in tow. After this the *Brasilian* steamed round the *Campanil* and up on to her starboard bow, and in so doing the *Brasilian* came with her port quarter into the starboard bow of the *Campanil* and did her considerable damage.

4. The *Brasilian* then threw a heaving line on board the *Campanil*, and one of the *Campanil's* hawsers was attached to the line and hauled on board the *Brasilian*, which passed one of her hawsers to the *Campanil* by means of life buoys, and when such hawser had been secured between the two vessels the *Brasilian* commenced to tow the *Campanil* for Vigo, it being at this time about 10.30 a.m., and Ons Island then bearing about south-east by south, and distant about 15 miles.

5. The *Brasilian* proceeded with the *Campanil* in tow, but owing to the two vessels being laden, and to the small power of the *Brasilian*, she was only able to make very slow progress with the *Campanil*, and it was not until 6.30 p.m. of the said day that the *Brasilian* arrived at Vigo with the *Campanil*, which then came to anchor off the town there.

6. The defendants on the day of tendered to the plaintiffs and have paid into Court the sum of £350 for the services so as aforesaid rendered to the *Campanil* and her said cargo and freight, and offered to pay the costs, and submit that the same is ample and sufficient.

(Title.)

Reply.

1. The plaintiffs admit the first and second articles of the Answer, and they admit that the *Brasilian* came into collision with the *Campanil*, and caused slight damage to the *Campanil*, but save as aforesaid they join issue upon the statement of defence.

4.

(Title.)

Statement of Claim.

Distribu-
tion of
salvage.

1. The defendants are and were at the times hereinafter mentioned the owners of the *Navarino*, an iron screw steamship of 2175 tons register and navigated by a crew of sixty-two hands all told, and the plaintiffs at such times formed part of such crew and served on board the said steamship in the respective capacities, following:—William Bennett, John William Johnson, and John Evison, as quartermasters; George Tong, George Short, and Robert Burns, able seamen; Arthur Brook, as ordinary seaman; Joseph Allen, William Freeman, Henry Brewer, Daniel Levenson, Henry Weatherston, James Dewa, and Francis Loosemoore, as firemen; Charles Hope, as leading stoker; and Alfred Cooke, as greaser.

The material facts of the circumstances of the service having been stated, proceed.

11. The owners of the *Rosario* (the salved ship) and of her cargo have paid to the defendants, and the defendants have accepted, the sum of £750 for the services so rendered to the *Rosario*, but the defendants, though requested to do so, have refused to pay the plaintiffs their equitable portion of the said sum.

And the plaintiffs claim :—

1. A declaration that they are entitled to an equitable proportion of the said sum of £750.
2. That the defendants be ordered to pay such proportion to the plaintiffs, together with the costs of this suit.
3. Such further and other relief as the nature of the case may require.

(Title.)

Statement of Defence.

1. The defendants admit the truth of the three first paragraphs of the statement of claim.

2. The defendants admit that the *Navarino* fell in with and towed the *Rosario* to Gibraltar on the occasion in the statement of claim mentioned, but they deny the truth of the statement that the *Rosario* was lying in the trough of the sea quite unmanageable, and say that the service was performed in moderately fine weather without difficulty or danger to the plaintiffs, and that the service was mainly performed by the *Navarino* herself by means of her steam power.

3. The *Rosario*, after the performance of the said service, went to Scotland and did not come within the jurisdiction of this Court, and the defendants, who reside in Hull, did not and were unable to enforce the claim of themselves and the master and crew of the *Novarino* to salvage in respect of the said service.

4. The crew of the *Navarino* having made frequent applications to the defendants for the payment of their shares of the salvage in respect of the said services, and constantly importuning the defendants in respect thereof, although the defendants had not received any amount in respect of such salvage, and had not agreed with the owners of the *Rosario* as to the amount to be received, the defendants determined to purchase their respective shares of the salvage from such of the crew as wished for an immediate payment, and, accordingly, by an indenture dated the 11th day of June, 1875, between the several persons, whose names are thereunto subscribed and seals are affixed of the one part, and the defendants of the other part, the said several persons, parties thereto of the first part, including all the plaintiffs except George Short and Robert Burns, in consideration of the respective sums set opposite to their respective names in the fourth column of the said schedule, paid by the defendants to the said parties of the first part, each of the said parties of the first part assigned to the defendants all and every the share, right, title, and interest of the said parties of the first part in the salvage or salvage reward and remuneration then due, or thereafter to be due, or paid, or awarded in respect of the salvage services set forth in the statement of claim, with power for the defendants to sue for, receive, and give receipts for the salvage, and to use the names of the said parties of the first part. The defendants crave leave to refer to the said indenture.

5. The sums so paid to the said plaintiffs respectively other than George Short and Robert Burns were as follows :—

	£	s.	d.
William Bennett	...	...	...
John William Johnson	...	...	...

(And so on £1 each.)

6. In the month of March, 1876, the *Rosario* being about to come within the jurisdiction of this Court, her owners agreed to settle

with the defendants for the said salvage, and paid the defendants in settlement thereof the sum of £750 by a bill at three months' date.

7. In rendering the said service, the *Navarino* was delayed on her voyage, and consumed an extra quantity of coals, and her hawseers were injured, and a loss of about £100 was thereby incurred by the defendants. The master of the *Navarino* having taken upon himself the responsibility of rendering the service, the defendants have paid him the sum of £125 as his share of the salvage.

8. The defendants legally tendered to each of the plaintiffs, George Short and Robert Burns, the sum of £4 in respect of his share of the salvage before this action was brought, but each of them respectively refused to accept such sums. The defendants have brought such sums into Court ready to be paid to the said plaintiffs.

9. The defendants submit that the sum of £4 so tendered to each of the said lastly-named plaintiffs was, and is, sufficient, and that the other plaintiffs are bound by the said indenture, and that the sums paid to them respectively thereunder were reasonable and fair.

(Title.)

Reply and Demurrer.

1. The plaintiffs join issue on the 2nd, 8th, and 9th paragraphs of the statement of defence.

2. The plaintiffs do not admit the statements contained in the 3rd and 7th paragraphs of the statement of defence.

3. The plaintiffs demur to the 4th and 5th paragraphs of the statement of defence, and say that the same are bad in law on the ground that the said agreement therein set out is void and inoperative under the provisions of the Merchant Shipping Act, 1854, and on other grounds sufficient in law to sustain this demurrer.

5.

(Title.)

Statement of Claim.

Towage.

1. On the 1st day of April, 1877, the ship *L. A.*, whereof the defendants are the owners, homeward bound, arrived off Southend, and here the master of the said ship thereupon agreed to engage the steam-tug *E.*, whereof the plaintiffs are the owners, to tow the said ship up the Thames to St. Katherine's Dock for reward in that behalf.

2. The *E.* took the said ship in tow, and continued in charge of her until she was placed in the said dock.

3. For the said services so rendered to the said ship as aforesaid there is due to the plaintiffs the sum of £ . . .

4. The defendants have refused to pay the said sum of £ . . . , and the same is still due and owing to the plaintiffs.

The plaintiffs claim :—

1. Judgment pronouncing for the claim of the plaintiffs.

2. The condemnation of the defendants, and then bail in the costs of this action.

3. Such further or other relief as the case may require.

(Title.)

Statement of Defence and Counterclaim.

1. The defendants admit the allegations in paragraphs 1, 2, and 4 of

the statement of claim, and say further that it was an implied condition of the agreement mentioned in paragraph 1 that the said ship *L.* should be safely and properly, and with reasonable care, towed to the said dock.

2. The defendants deny that a sum of £ is due to the plaintiffs as alleged in paragraph 3 of the statement of claim.

3. The defendants say that at a time when the said steam-tug *E.* was in charge of the *L.*, and as the vessels were proceeding up St. Clement's Reach with about 150 feet of tow rope between the said vessels, the said tug and ship came in sight of a ship or vessel the *M.*

4. The wind was then south-west, the tide flood running from two to three knots an hour; the *M.* was under sail and beating up the river and standing over on the port tack heading to the northward and westward.

5. The *E.*, without receiving orders from the pilot, ported her helm and attempted to tow the *L.* ahead of the *M.*; but in so doing the stem of the *L.* struck the *M.* amidships on the starboard side, and the *L.* was in consequence thereof greatly damaged.

6. Such damage was caused by the negligent navigation and management of the *E.*, and in consequence of acting without the orders of the pilot, and was a breach of the said contract entered into between the master of the steam-tug *E.* and the ship *L.*, and releases the defendants from payment of the said sum of £ .

7. And by way of counterclaim the defendants repeat the allegations contained in paragraphs 3, 4, and 5 of the statement of defence.

The defendants claim :—

1. A declaration that the defendants are entitled to the damage occasioned to them by reason of the said collision.
2. The condemnation of the plaintiffs, and their bail in such damages and in costs.
3. That the accounts and vouchers relating to such damage should be referred to the registrar, assisted by merchants to report the amount thereof.
4. Such further or other relief as the nature of the case may require.

(Title.)

Reply.

The plaintiffs join issue upon the defendants' statement of defence and counterclaim.

6.

No. 11 (J. A.)

(Title.)

Statement of Claim.

1. Shortly before 8 a.m. on the 9th of December, 1874, the brigantine *Katie*, of 194 tons register, of which the plaintiffs were owners, manned by a crew of eight hands all told, whilst on a voyage from Dublin to St. John's, Newfoundland, in ballast, was in latitude about 46° N., and longitude 40° 42' W., by account. Collision.

2. The wind at such time was about W. by S., a strong breeze, and the weather was clear, and the *Katie* was under double-reefed mainsail, reefed mainstaysail, middle staysail, lower topsail, reefed fore staysail, and jib, sailing full and by on the port tack, heading about NW. $\frac{1}{2}$ N., and proceeding at the rate of about five knots and a half per hour.

3. At such time a steamship under steam and sail, which proved to be the screw steamship *American*, was seen at the distance of three or four miles from the *Katie*, broad on her port bow, and steering about E. or E. by S. The master of the *Katie* not having been able to take observations for several days, and her chronometer having run down, and the said master wishing to exchange longitudes with the *American*, caused an ensign to be hoisted, and marked his longitude by account on a board which he exhibited over the port side. The *Katie* was kept full and by, and the *American* approached rapidly, and attempted to pass ahead of the *Katie*, and caused immediate danger of collision, and although thereupon the helm of the *Katie* was put hard a-port and her mainsheet let go, the *American* with her stem struck the *Katie* on her port side, almost amidships, cutting her nearly in two, and the *Katie* sank almost immediately, her crew being saved by the steamer.

4. The *American* improperly neglected to keep clear of the *Katie*.

5. The *American* improperly attempted to pass ahead of the *Katie*.

6. The *American* improperly neglected to ease her engines, and improperly neglected to stop and reverse her engines in due time.

The plaintiffs claim :—

1. That it may be declared that the plaintiffs are entitled to the damage proceeded for :
- 2 That the bail given by the defendants be condemned in such damage and in costs :
3. That the accounts and vouchers relating to such damage be referred to the registrar, assisted by merchants to report the amount thereof :
4. Such further and other relief as the nature of the case may require.

(Title.)

Statement of Defence.

The defendants say as follows :—

1. The *American* is a screw steamship, of 1368 tons register, with engines of 200-horse power nominal, belonging to the port of Liverpool, and at the time of the occurrences hereinafter mentioned was manned by a crew of forty hands all told, laden with a cargo of general merchandise, and bound from Port-au-Prince in the West Indies to Liverpool.

2. About 8.5 a.m., on the 28th of November, 1874, the *American* was in latitude 46° N., longitude $38^{\circ} 16'$ W., steering E. by S. true magnetic, making under all sail and steam about 12 knots an hour, the wind being about SW. by S. true magnetic, blowing a strong breeze and the weather hazy, when a vessel, which afterwards proved to be the brigantine *Katie*, was observed on the *American's* starboard bow about four miles distant, bearing about SE. by E. true magnetic, close-hauled to the wind, and steering a course nearly parallel to that of the *American*.

3. The *American* kept her course, and when the *Katie* was about three miles distant, her ensign was observed by those on board the *American* run up to the main, and she was seen to have altered her course, and to be bearing down towards the *American*. The *American's* ensign was afterwards run up, and her master, supposing that the *Katie* wanted to correct her longitude, or to speak the *American* continued on his course, expecting that the *Katie* when she had got sufficiently close to speak or show her black board over her starboard side, would luff to the wind, and pass to windward of the *American*.

4. The master of the *American* watched the *Katie* as she continued to approach the *American*, and when she had approached as near as he deemed it prudent for her to come, he waved to her to luff, and shortly afterwards on his observing her to be attempting to cross the bows of the *American*, the helm of the latter was immediately put to starboard, and engines stopped and reversed full speed; but notwithstanding, the *American* with her stem came into collision with the port side of the *Katie* a little forward of the main rigging.

5. The *American's* engines were then stopped, and when the crew of the *Katie* had got on board of the *American*, the latter's engines were reversed to get her clear of the *Katie*, which sunk under the *American's* bows.

6. The *Katie* improperly approached too close to the *American*.

7. Those on board the *Katie* improperly neglected to luff, and to pass to windward of the *American*.

8. Those on board the *Katie* improperly attempted to cross the bows of the *American*.

9. Those on board the *Katie* improperly ported her helm before the said collision.

10. Those on board the *Katie* improperly neglected to starboard her helm before the said collision.

(Title.)

Reply.

The plaintiffs join issue upon the defendants' statement of defence.

7.

(Title.)

Statement of Claim.

1. The *Express* is a foreign vessel of which no owner or part owner was at the time of the institution of this cause domiciled in England or Wales. Breach of contract.

2. In or about the month of June, 1870, whilst the *Express* was lying in the port of Taganrog, the plaintiff caused to be shipped on board of her a cargo of rye, and the master of the said vessel accepted the same to be carried in the said ship from Taganrog aforesaid to Queenstown, Falmouth, or Plymouth for orders, and thence to a port as ordered under and according to the terms of a certain bill of lading duly signed and delivered by the said master, according to which bill of lading the said goods were to be delivered in the like good order and condition, or they were shipped in at a safe afloat port in the United Kingdom, or on the Continent, as per a certain charter-party (the act of God, the Queen's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation of

whatever nature and kind soever excepted) unto the plaintiffs of London, or to their assigns, paying freight, gratuity, and demurrage (if any) for the said goods and other conditions, as per charter-party.

3. The *Express* duly sailed on her said voyage with the said cargo on board, and in the course of the said voyage without any justifiable cause or excuse put into the port of Gibraltar. After the said vessel had so put into the said port, and whilst she was lying there, her master was requested by the plaintiffs to proceed on the before-mentioned voyage, and if he would not do so then to tranship and forward the said cargo.

4. The said master however declined to comply with such request, and remained at Gibraltar with his said vessel, with the said cargo on board of her, a very considerable time.

5. By reason of the premises the said master wrongfully and without justifiable cause, in violation of the terms of the said bill of lading, deviated from and delayed proceeding on the voyage in the said bill of lading mentioned.

6. The plaintiffs were and are the owners of the said cargo, and the holders of the said bill of lading.

7. By reason of the premises, the said cargo became and was greatly heated, damaged, and depreciated, and the said cargo was delivered to the plaintiffs in a much worse order and condition than it was shipped in, this not being occasioned by any of the perils, causes, or matters in the said bill of lading excepted, and thereby the plaintiffs have sustained great loss and have been deprived of divers profits which they would otherwise have derived from the said cargo.

The plaintiffs claim :—

1. £ for damages.
2. The condemnation of the said vessel, and the defendants and their bail in the same, and in the costs of this action.
3. Such further or other relief as the case may require.

(Title.)

Statement of Defence.

1. In the month of May, 1870, the *Express*, which then was and ever since has been, and still is, a vessel sailing under the flag of the North German Confederation, and belonging to the port of Rostock, in the Duchy of Mecklenburg, one of the states of the said Confederation, and owned by persons being subjects of the said Confederation, was lying in the port of Constantinople, and on the third day of the said month of May, a charter-party was made and entered into between *Wilhelm Freturirst*, the master of the *Express*, and Messrs. *Schjott and Reppen*, merchants of Constantinople, and subjects of the said Confederation. By such charter-party it was agreed that the *Express*, under the German flag, should proceed to a loading place in the *Azoff*, as ordered at *Berdianski*, and there load from the factors of the freighter a full and complete cargo of tallow, wheat, Indian corn, seed, or other stowage goods at the option of the freighter; and being so loaded should therewith proceed to a safe port in the United Kingdom, or a safe port on the Continent between Havre and Hamburg, both inclusive, or so near thereunto as she might safely get, calling at *Queenstown*, *Falmouth*, or *Plymouth*, at the master's option, and deliver the said cargo on being paid freight as therein mentioned (the

act of God, the Queen's enemies, restraint of princes and rulers, fire, and all and every other dangers and accidents of the seas, rivers, and navigation always excepted).

2. In pursuance of the terms of the said charter-party, the *Express* proceeded to Taganrog which was the loading port in the sea of Azoff, for which she received orders at Berdianski, and the plaintiffs who were the factors of the freighters within the meaning of the said charter-party caused to be shipped upon the *Express* at Taganrog a cargo of rye in bulk, and the master of the *Express* signed and delivered to the plaintiffs a bill of lading in respect of the said cargo in the words and figures following, that is to say [*the bill of lading should be set out at length*].

3. On the 29th of June, 1870, the *Express* set sail from Taganrog, with the said cargo and proceeded on her voyage, and on the 16th day of August, 1870, cast anchor off Algeiras with the intention of filling up her water casks, strong winds from the north-westward having for some days prevented and still continuing to prevent her from working through the Straits of Gibraltar.

4. After the sailing of the said ship from Taganrog, and before she anchored off Algeiras as aforesaid, war broke out and was declared between the Empire of France and the States of the said Confederation, and such war continued to exist down to and existed at the time when the *Express* anchored off Algeiras as aforesaid, and by reason of such war the *Express* became and was liable to risk of capture.

5. Upon arriving at Algeiras as aforesaid, the master of the *Express* was informed of the outbreak and existence of the said war and learned that it would be dangerous for the *Express* to proceed upon her voyage owing to the risk of her being captured by French cruisers at sea, and on the 18th day of August, 1870, the master of the *Express*, as he lawfully might do under and by virtue of the laws of Mecklenburg and of the said Confederation, and as was reasonable and proper for him to do under the circumstances herein set forth, sailed with the *Express* from Algeiras and proceeded to and on the same day arrived in the roadstead of Gibraltar, which was a safer and more sheltered anchorage than that of Algeiras. It is not the fact that the master of the *Express* without justifiable cause and excuse, or wrongfully or in violation of the terms of the said bill of lading, put into the port of Gibraltar as alleged in the 3rd and 5th paragraphs of the statement of claim.

6. On the 30th day of January, 1871, the master of the *Express* received intelligence that an armistice had been concluded between France and the said States of the North German Confederation, and thereupon immediately began to prepare the *Express* to proceed upon her voyage, and on the 2nd day of February, 1871, the news of an armistice having been confirmed and the necessary preparations completed, the *Express* set sail from Gibraltar to complete her voyage.

7. From the time of the arrival of the *Express* at Algeiras until the 30th day of January, 1871, the said war continued to exist, and during all such time the *Express* would have been liable to risk of capture if she had attempted to proceed upon her voyage; and during all such time armed French cruisers were cruising off the Straits of Gibraltar and in the Atlantic Ocean, and in the English Channel and off the ports of Cork, Falmouth and Plymouth with the intention of capturing the *Express* and other North German vessels; and if the *Express* had during the time aforesaid attempted to proceed on her

voyage she would certainly have been captured by some or one of such cruisers.

8. It is not the fact that the master of the *Express* unjustifiably or in violation of the said bill of lading delayed proceeding on his voyage as alleged in the 5th paragraph of the statement of claim; on the contrary, the said master was always ready and desirous to proceed from Gibraltar as soon as he could do so without being exposed to risk of capture.

9. By the law of the North German Confederation the master of the *Express* was entitled to keep her at Gibraltar whilst she would have been liable to risk of capture at sea by reason of the said war, and the said master was not, whilst the said war and liability of capture continued, under any obligation to attempt to proceed further upon his said voyage; and by the said law the master of the *Express* was not guilty of any breach of contract or duty with or to the plaintiffs in respect of his putting into Gibraltar or remaining there with the *Express* with the said cargo on board of her, or in respect of not transshipping the said cargo.

10. The master of the *Express* sailed from Gibraltar with the *Express* within a reasonable and proper time after receiving notice of the termination of the risk of capture by reason of the said war.

11. On the 17th day of February, 1871, the *Express* arrived in Falmouth Harbour, and her master, having duly given notice of his arrival to the charterers' agents in London, on the 20th day of the same month received orders to proceed to London, and on the same day the *Express* left Falmouth, and on the 26th day of February, 1871, arrived in London.

12. On the 28th day of the said month of February, the discharge of the cargo was commenced; and on the 2nd day of March, 1871, such discharge was completed.

13. It is not the fact that the cargo of the *Express* was delivered in a worse order and condition than it was in when shipped.

14. If the said cargo was delivered in worse order and condition than it was when shipped, the deterioration was caused by the detention of the *Express* at Gibraltar, as hereinbefore mentioned, which is an exceptive peril within the true intent and meaning of the exception of "the Queen's enemies" contained in the said bill of lading, and by the natural condition and inherent vice of the said cargo, or by one of such causes.

15. Whilst the said vessel was detained at Algeiras and Gibraltar as aforesaid, the master of the *Express* used all due and proper, and reasonable care and skill in ventilating, trimming, and otherwise caring for the said cargo, and did all things on his part to be done in taking care of the same, and any deterioration or depreciation of the said cargo was not caused by any neglect or default of the said master, but was caused by the detention of the said vessel as aforesaid, and by the natural condition and inherent vice of the said cargo, or by both of these causes; and by the law of the said North German Confederation, regard being had to the terms of the said bill of lading and charter-party, neither the *Express* nor her owners nor the said master is or are liable to damages in respect of the depreciation or deterioration of the said cargo.

16. Save as herein appears the defendants admit the several allegations contained in the statement of claim.

(Title.)

Reply.

The plaintiffs join issue on the defendants' statement of defence.

— — —
8.

No. 8 (J. A.)

(Title.)

Statement of Claim.

1. The *Ida* is a vessel of which no owner or part owner was, at the time of the institution of this cause, domiciled in England or Wales.* **Damage to cargo.**

2. In the month of February, 1873, Messrs. *L. and Company* of Alexandria, caused to be shipped 6110 ardebs of cotton seed on board the said vessel, then lying in Port Said (Egypt), and the then master of the vessel received the same, to be carried from Port Said to Hull, upon the terms of three bills of lading, signed by the master, and delivered to Messrs. *L. and Company*.

3. The three bills of lading, being in form exactly similar to one another, were and are, so far as is material to the present case, in the words, letters, and figures following, that is to say:—

“Shipped in good order and well conditioned by *L. & Co.*, Alexandria (Egypt) in and upon the good ship called the *Ida*, whereof is master for the present voyage Ambrozio Chiapella, and now riding at anchor in the port of Port Said (Egypt) and bound for Hull, six thousand one hundred and ten ardebs cotton seed being marked and numbered as in the margin, and are to be delivered in the like good order and well-conditioned at the aforesaid port of Hull (the act of God, the Queen's enemies, fire and all and every other dangers and accidents of the seas, rivers, and navigation of whatever nature and kind soever, save risk of boats so far as ships are liable thereto, excepted), unto order or to assigns paying freight for the said goods at the rate of (19s.) say nineteen shillings sterling in full per ton of 20 cwt. delivered with £10 gratuity. Other conditions as per charter-party, dated London, 4th October, 1872, with primage and average accustomed. In witness whereof the master or purser of the said ship hath affirmed to three bills of lading all of this tenor and date, the one of which three bills being accomplished the other two to stand void. Dated in Port Said (Egypt) 6th February, 1873. 100 dunnage mats. Fifteen working days remain for discharging.”

4. The persons constituting the firm of Messrs. *L. and Company* are identical with the members of the plaintiff's firm.

5. The vessel sailed on her voyage to Hull, and duly arrived there on or about the 7th day of May, 1873.

6. The cotton seed was delivered to the plaintiffs but not in as good order and condition as it was in when shipped at Port Said; but was delivered to the plaintiffs greatly damaged.

* A statement to this effect may be inserted if the action be under sect. 6 of the Admiralty Act, 1861.

7. The deterioration of the cotton seed was not occasioned by any of the perils or causes in the bills of lading excepted.

8. By reason of the premises the plaintiffs lost a great part of the value of the said cotton seed, and were put to great expense in and about keeping, warehousing, and improving the condition of the said cotton seed, and in and about having the same surveyed.

The plaintiffs claim the following relief :—

1. £ for damages, [and the condemnation of the said vessel, and the defendant and his bail in the same]:
2. Such further relief as the nature of the case requires.

(Title.)

Statement of Defence.

1. They deny the truth of the allegations contained in the sixth, seventh, and eighth articles of the said petition.

2. The deterioration, if any, to the cotton seed was occasioned by the character and quality of the cotton seed when shipped on board the *Ida*, and by the inherent qualities of the cotton seed, and by shipping water in a severe storm which occurred on the day of , in latitude during the voyage, or by some or one of such causes.

(Title.)

Reply.

The plaintiffs join issue upon the statement of defence.

9.

(Title.)

Statement of Claim.

Wages.

1. The plaintiff, *W. J.*, on or about August 17th, 1876, entered into an agreement with the owners of the said ship *Nelly Gray* to proceed from New York to Liverpool at the expense of the said owners, and there to take command of the said ship.

2. By the said agreement the wages of the plaintiff were to be at the rate of 125 dollars per month, from August 20th, 1876.

3. The plaintiff having proceeded to Liverpool, according to the terms of the said agreement, took command of the said vessel and continued in command from August 20th to November 20th, 1876.

4. As such master, and whilst he was in command of the said ship, wages became due to the plaintiff, the plaintiff also properly made the disbursements and incurred the board expenses hereinafter claimed, from August 20th to November 20th, 1876, and such wages, disbursements, and expenses still remain due to him and unpaid, and the plaintiff cannot obtain payment thereof without the assistance of the Court.

5. The claim of the plaintiff consists of the following items :—

	£	s.	d.
Wages from 20th August to 20th November, 187			
at 125 dollars (£25) per month ...	75	0	0
Passage money from New York to Liverpool ...	15	0	0
Ten weeks board in Liverpool at £2 2s. per week ...	21	0	0
Marketing for ship, coals for same, and disbursements for hauling and watching same ...	16	0	0
Total ...	£127	0	0

Together with interest at 5 per cent. on the said sum of £127 until judgment.

The plaintiff claims :—

1. Judgment pronouncing for the claim of the plaintiff.
2. The condemnation of the said ship, the defendant and his bail therein, and the costs of the said action, if no appearance by a defendant has been entered, and that she be sold by order of the Court, and that the claim of the plaintiff be satisfied from the proceeds of the said sale.
3. Such further or other relief as the nature of the case may require.

(Title.)

Statement of Defence.

1. The defendant admits the statements in the first, second, and third paragraphs of the statement of claim.
2. The defendant as to the fourth paragraph of the statement of claim says that the plaintiff whilst in command of the said vessel was frequently and habitually in a state of intoxication, and in consequence of his said state the said vessel was detained for three days at Liverpool, whereby the voyage was unnecessarily protracted and losses were incurred by the defendant through the improper conduct of the plaintiff.
3. The defendant denies that the said expenses and disbursements were necessary or proper.
4. The defendant pays into Court the sum of £15, and says that the same is enough to satisfy the claim of the plaintiff herein.

Reply.

The plaintiff takes issue on the defendant's statement of defence, and accepts the said sum of £15 in satisfaction of a part of his claim.

Reply.

(Title.)

The plaintiff joins issue on the defendant's statement of defence.

10.

No. 12 (J. A.)

(Title.)

Statement of Claim.

1. The said vessel was and is a British Colonial vessel belonging to

Necessaries.

the port of Digby, in Nova Scotia, of which no owner or part owner was at the time of the commencement of this action or is domiciled in England or Wales.

2. At the time of the commencement of this action the said vessel was under arrest of this Court.

3. About the month of February, 1868, the said vessel was lying in the port of London, in need of repairs, and of being equipped and supplied with certain other necessaries.

4. By the order of Messrs. *K.L.*, who were duly authorized, the plaintiffs equipped and repaired the said vessel as she needed, and provided the vessel with necessaries, and there is now due to the plaintiffs for such necessary repairing and equipping, and other necessaries, the sum of £305 3s., together with interest thereon from the 19th day of February, 1868.

The plaintiffs claim :—

1. Judgment for the said sum of £305 3s., with such interest thereon as aforesaid until judgment.
2. The condemnation of the ship and the defendant and his bail therein and in the costs of this suit.
3. Such further relief as the nature of the case requires.

(Title.)

Statement of Defence.

1. By an instrument of mortgage, in the form and recorded as prescribed by the Merchant Shipping Act, 1854, bearing date the 9th of March, 1867, and executed by *C.M.*, blacksmith, *D.F.*, master mariner, and *W.H.*, farmer, of Weymouth, in the county of Digby, in Nova Scotia, the registered owners of 64-64th parts or shares in the vessel, the said *C.M.*, *D.F.*, and *W.H.*, mortgaged 64-64th parts or shares in the vessel, of which the said *D.F.* was also master, to *G.T.*, of Nova Scotia, in consideration of the sum of 5000 dollars advanced by him to the said owners, and for the purpose of securing the repayment by them to him of the said sum with interest thereon.

2. By an instrument of transfer, dated the 16th of July, 1868, in the form prescribed by the said Act, and executed by *G.T.*, in consideration of the sum of 5000 dollars to *G.T.* paid by the defendant, *G.T.* transferred to the defendant the mortgage security.

3. The said sum of 5000 dollars, with interest thereon, still remains due on the said security.

4. The vessel was not under the arrest of this Court at the time of the commencement of this action.

5. The vessel did not need to be equipped or repaired as in the fourth paragraph of the plaintiffs' claim mentioned, and she did not at the time of the supply of the articles referred to in the said fourth paragraph as "necessaries" stand in need of such articles. On the contrary, the said vessel could have gone to sea and proceeded on and prosecuted her voyage without such equipments, repairs, and articles referred to as aforesaid, and such equipments, repairs, and other articles were done and effected and supplied for the purpose of re-classing the said vessel, and not for any other purpose; and the claim of the plaintiffs is not a claim for necessaries within the meaning of the Admiralty Court Act, 1861, s. 5.

6. The alleged necessities were not supplied on the credit of the said vessel, but upon the personal credit of *J.B.*, who was the broker for the vessel, and upon the agreement that the plaintiffs were not to have recourse to the vessel.

7. The defendant did not, nor did *G.T.* in any way order, authorize, or become liable for, and neither of them is in any way liable in respect of the said alleged supplies or any part thereof, and the said vessel was at the time of the commencement of this action, and she still is of a less value than the amount which, irrespective of the sums referred to in the next article of this answer, is due to the defendant on the said mortgage security.

8. The defendant, in order to save the vessel from being sold by this Court at the instance of certain of her mariners having liens on the said vessel for their wages, has been compelled to pay the said wages, and he claims, if necessary, to be entitled to stand in the place of such mariners, or to add the amounts so paid by him for wages to the amount secured by the said mortgage, and to have priority in respect thereof over the claim of the plaintiffs.

(Title.)

Reply.

1. The plaintiffs admit that 64-64th shares in the said ship, the *Two Ellens*, were on or about the 9th day of March, 1867, mortgaged by the said *C.M.*, *D.F.*, and *W.H.*, all of Weymouth, in the county of Digby, Nova Scotia, to the said *G.T.*

2. Save as afore-mentioned, all the several averments in the said answer contained are respectively untrue.

3. If there was or is any such instrument of transfer as is mentioned in the second article of the said answer, the same has never been registered according to the provisions of the Merchant Shipping Act, 1854.

4. The said *G.T.* has never been domiciled in or resided in the United Kingdom, and is now resident in Nova Scotia, and the registered owners of the said vessel in the first paragraph of the said defence mentioned were always and are domiciled in Nova Scotia, and resident out of the United Kingdom.

(Title.)

Rejoinder.

The defendant joins issue upon the third and fourth paragraphs of the reply.

11.

No. 19 (J. A.)

(Title.)

Statement of Claim.

1. The plaintiffs were at the time hereinafter stated and are

Equip-
ment of
ship.

engineers and ironfounders, carrying on business at Liverpool, in the county of Lancaster.

2. In the month of January, 1872, whilst the above-named steamship *Enterprise*, belonging to the port of London, was in the port of Liverpool, the plaintiffs, having received orders from the master in that behalf, executed certain necessary work to her and supplied her with certain necessary stores and materials, and caused her to be supplied upon their credit with certain necessary work, labour, materials, and necessaries, and thereby supplied the said ship with necessaries within the meaning of the fifth section of the Admiralty Court Act, 1861.

3. There is due to the plaintiffs in respect of such supply of necessaries to the said ship the sum of £577 2s. 6d., and the plaintiffs cannot obtain payment thereof without the assistance of the Court.

The plaintiffs claim:—

1. Judgment pronouncing for the claim of the plaintiffs:
2. The condemnation of the defendants and their bail therein, with costs:
3. A reference, if necessary, of the claim of the plaintiffs to the registrar, assisted by assessors, to report the amount thereof:
4. Such further relief as the nature of the case requires.

(Title.)

Defence.

1. The defendants deny the allegations contained in the third paragraph of the statement of claim.

2. The defendants admit that the plaintiffs executed certain work to the said ship, and supplied her with certain materials, but they say that a portion of the work so executed was executed badly and insufficiently, and of the materials so supplied, some were bad and insufficient, and a portion of the work in the claim mentioned was done in and about altering and endeavouring to make good such bad and insufficient work and materials. The defendant has paid in respect of the work and materials in the claim mentioned the sum of £356 17s. 9d., and the said sum is sufficient to satisfy the claims of the plaintiffs.

3. The defendants deny the allegations contained in the second paragraph of the claim, so far as they relate to any claim beyond the said sum of £356 17s. 9d., and say that if the plaintiffs did execute any work or did supply any materials other than the work and materials mentioned in the second paragraph of this defence, such work was not necessary work, and such materials were not necessary materials, within the meaning of the fifth section of the Admiralty Court Act, 1861, and were not supplied in such circumstances as to render the defendants liable to pay for the same.

(Title.)

Reply.

The plaintiffs join issue upon the defendants' statement of defence.

12.

No. 21 (J. A.)

(Title.)

Statement of Claim.

1. On or about the 15th of July, 1868, an agreement was entered into between the plaintiff and *J.D.*, who was then the sole owner of the barque *Lady of the Lake*, whereby *J.D.* agreed to sell, and the plaintiff agreed to purchase, 32-64th parts or shares of the vessel for the sum of £500; payment £300 in cash, and the remainder by purchaser's acceptances at three and six months date, and it was thereby agreed that the plaintiff was to be commander of the vessel. **Possession.**

2. The plaintiff accordingly paid to *J.D.* the sum of £300, and gave him his (the plaintiff's) acceptances at three and six months date for the residue of the said purchase-money, and *J.D.* by bill of sale transferred 32-64th parts or shares in the vessel to the plaintiff, which bill of sale was duly registered on the 18th of July, 1868; the plaintiff has since been and still is the registered owner of such 32-64th shares.

3. The vessel then sailed under the plaintiff's command on a voyage from Sunderland to the Brazils and other ports, and then on a homeward voyage to Liverpool, where she arrived on the 18th of June, 1869, and having there discharged her homeward cargo she sailed thence under the plaintiff's command with a cargo to the Tyne, and thence to Sunderland, at which port she arrived on the 9th of August, 1869.

4. The plaintiff then made several ineffectual applications to *J.D.*, with a view to obtaining another charter for the said vessel, and after she had been lying idle for a considerable time, the plaintiff on or about the 16th of September, 1869, obtained an advantageous charter for her to proceed to Barcelona with a cargo of coals, and with a view to enabling her to execute such charter, the plaintiff paid the dock dues and moved the vessel into a slipway in order that her bottom might be cleaned, but on or about the 17th of September, whilst the vessel was on the shore adjoining the slipway, the defendant, to whom the said *J.D.* had in the meantime transferred his 32-64th parts, forcibly took the vessel out of the possession of the plaintiff, and refused and still refuses to allow the plaintiff to take the vessel on her said voyage to Barcelona, and by reason thereof heavy loss is being occasioned to the plaintiff.

The plaintiff claims:—

1. Judgment giving possession of the vessel *Lady of the Lake* to the plaintiff;
2. The condemnation of the defendant in costs of suit, and in all losses and damages occasioned by the defendant to the plaintiff;
3. Such further relief as the nature of the case requires.

(Title.)

Defence.

1. The defendant says that the acceptances in the second para- **Defence.**

graph of the claim mentioned were respectively dishonoured by the plaintiff, and have never yet been paid by him.

2. It was agreed between the plaintiff and *J.D.*, that *J.D.* should act, and he has since always acted as ship's husband of the *Lady of the Lake*.

3. On the 31st of August, 1869, *J.D.* sold to the defendant for the sum of £400, and by bill of sale duly executed, transferred to him his 32-64th shares, and the bill of sale was duly registered on the 14th of September following.

4. After the *Lady of the Lake* had arrived at Sunderland, and after the defendant had purchased from *J.D.* his 32-64th shares of the *Lady of the Lake*, the defendant placed the vessel in the custody and possession of a shipkeeper. The plaintiff, however, unlawfully removed her from such possession, and thereupon the defendant had the vessel taken into the South Dock of the harbour at Sunderland, with orders that she should be kept there. What the defendant did, as in this article mentioned, he did with the consent and full approval of *J.D.*

5. At the time of the sale of the *Lady of the Lake* by *J.D.* to the defendant as aforementioned, there was and there still is due from the plaintiff, as part owner of the *Lady of the Lake*, to *J.D.*, as part owner and ship's husband, a sum of money exceeding £300 in respect of the vessel and her voyages over and above the amount of the unpaid acceptances.

6. Save as herein appears, the averments in the fourth paragraph of the claim contained are untrue, and if the charter-party mentioned in that paragraph was obtained by the plaintiff as alleged, which the defendant does not admit, it was obtained by him without the authority, counsel, or knowledge of *J.D.* or the defendant.

7. Before the defendant took possession of the vessel as aforementioned, the plaintiff ceased to be master of her, with the consent of *J.D.* or the defendant.

8. *J.D.* has instituted an action against the said vessel in order to have the accounts taken between him and the plaintiff, and to enforce payment of the money due from the plaintiff to him.

(Title.)

Reply.

1. The plaintiff says in reply to the first paragraph of the defence that the bills therein mentioned were dishonoured by the plaintiff because *J.D.* was indebted to the plaintiff in a large amount for his wages as master, and for his share of the earnings of the *Lady of the Lake*, and refused payment thereof.

2. *J.D.* did not place the vessel in the exclusive custody or possession of a shipkeeper as in the fifth paragraph of the defence stated or implied. On the contrary, the vessel continued in the custody and possession of the plaintiff, who still holds her register. A man was sent on board the vessel by *J.D.* to look after *J.D.*'s share in the said vessel while she was in dock, but he did not dispossess the said plaintiff or take exclusive possession of the vessel, and the plaintiff was not dispossessed of the vessel until on or about the 17th of September last.

3. Except as hereinbefore appears the plaintiff joins issue upon the defendant's statement of defence.

(Title.)

Rejoinder.

The defendant joins issue upon the first and second paragraphs of the reply.

13.

(Title.)

Statement of Claim.

1. By an indenture dated the 10th day of June, 1877, made between one *A.B.*, then being the sole owner of the ship *W.O.*, of the one part, and the plaintiff of the other part; the said *A.B.*, in consideration of the sum of £1000 paid to him by the plaintiff, conveyed to the plaintiff 64-64th parts in the said ship *W.O.*, subject to a proviso for the redemption of the same on payment by the said *A.B.*, his executors, administrators or assigns, to the plaintiff of the sum of £1000, with interest for the same in the meantime at the rate of 5 per cent. per annum on the 25th day of September then next ensuing.

2. The whole of the said sum of £1000, with an arrear of interest thereon, remains due to the plaintiff on his said security.

The plaintiff claims :—

1. Judgment giving possession of the said ship *W.O.* to the plaintiff.
2. The condemnation of the defendant in the costs of the action.
3. Such further or other relief as the nature of the case may require.

(Title.)

Statement of Defence.

1. The defendant admits the allegation in the plaintiff's statement of claim.

2. The defendant says that the said *A.B.* by deed, dated the 1st day of January, 1877, made between the said *A.B.* of the one part and the defendant of the other part, in consideration of the sum of £1000 paid by him to the said *A.B.*, conveyed to the defendant 64-64th parts in the said ship *W.O.*, subject to a proviso for the redemption of the same on payment by the said *A.B.*, his executors, administrators, and assigns, to the plaintiff of the sum of £1000 with interest for the same in the meantime at the rate of 5 per cent. per annum on the 1st day of November then next ensuing.

3. The whole of the said sum of £1000 with arrears of interest was due and owing on the 20th day of November, when the defendant took possession of the said ship, and the value of the said ship is less than the said sum of £1000, together with the arrears of interest.

(Title.)

Reply.

The plaintiff joins issue on the defendant's statement of defence.

14.

No. 9 (J. A.)

(Title.)

*Statement of Claim.***Bottomry.**

1. The *Onward*, a ship of 933 tons register, or thereabouts, belonging to the United States of America, whilst on a voyage from Moulmein to Queenstown or Falmouth for orders, and from thence to a port in the United Kingdom or on the Continent, between Bordeaux and Hamburg, both ports inclusive, laden with a cargo of teak timber, was compelled to put into Port Louis, in the island of Mauritius, in order to repair and refit.

2. The master of the *Onward*, being without funds or credit at Port Louis, and being unable to pay the expense of the said repairs, and the necessary disbursements of the said ship at Port Louis, so as to enable the said ship to resume and prosecute her voyage, and after having communicated with his owners and with the owners and consignees of the cargo, was compelled to resort to a loan of 24,369 dollars on bottomry of the said ship, her cargo and freight, for the purpose of enabling him to pay the said expenses and disbursements, which sum Messrs. *H. and Company*, of Port Louis, at the request of the master by public advertisement, advanced to the said master at and after the rate of 128 dollars for every 100 dollars advanced, and accordingly the said master, by a bond of bottomry dated the 13th of October, 1870, by him duly executed in consideration of the sum of 24,369 dollars, Mauritius currency, paid to him by the said Messrs. *H. and Company*, bound himself and the said ship and her cargo, namely, about 940 tons of teak timber, and her freight, to pay unto Messrs. *H. and Company*, their assigns, or order or indorsees, the said sum of 24,369 dollars with the aforesaid maritime premium thereon, within twenty days next after the arrival of the *Onward* at her port of discharge from the said intended voyage, the said payment to be made both in capital and interest in British sterling money, at and after the rate of 4s. for every dollar, with a condition, that in case the said ship and cargo should be lost during her voyage from Port Louis to Queenstown or Falmouth, for orders, and thence to her port of discharge in the United Kingdom or on the Continent between Bordeaux and Hamburg, both ports inclusive, then that the said sum of 24,369 dollars, and maritime premium thereon, should not be recoverable.

3. The *Onward* subsequently proceeded on her voyage, and on the 7th of February, 1871, arrived with her cargo on board at the port of Liverpool, which was her port of discharge.

4. The bond was duly indorsed and assigned to the plaintiffs.

5. The ship has been sold by order of the Court, and the proceeds of the sale thereof have been brought into Court, and the freight has also been paid into Court.

6. The said sum of 24,369 dollars, with the maritime premium thereon, still remain due to the plaintiffs. By a decree made on the 10th of May, 1871, the Court pronounced for the validity of the bond, so far as regarded the ship and freight, and condemned the proceeds of the ship and freight in the amount due on the bond. The principal and premium still remain owing to the plaintiffs, and the

proceeds of the said ship and her freight available for payment thereof are insufficient for such payment.

The plaintiffs claim :—

1. That the Court pronounce for the validity of the bond so far as regards the cargo :
2. That the Court condemn the defendants and their bail in so much of the amount due to the plaintiffs on the bond for principal, maritime premium, and for interest from the time when such principal and premium ought to have been paid, as the proceeds of the ship and freight available for payment of the bond shall be insufficient to satisfy, and in costs :
3. Such further relief as the nature of the case requires.

(Title.)

Statement of Defence.

The defendants say that the—

1. Several averments in the second article of the statement contained are respectively untrue, except the averment that the bottomry bond therein mentioned was given and executed.

2. The *Onward* proceeded on the voyage in the first paragraph of the claim mentioned, under a charter-party made between the defendants and the owners of the vessel, who resided at New York. And the cargo in the said paragraph mentioned belonged to the defendants, and was shipped at Moulmein, by Messieurs. T., F., and Company, of Moulmein, consigned to the defendants.

3. When the *Onward* put into port Louis, the master placed his ship in the hands of Messrs. H. and Company, the persons in the second paragraph of the claim mentioned, and the repairs and disbursements in the said second article mentioned were made, directed, and expended under the orders, management, and on the credit of the said Messrs. H. and Company, who at the outset contemplated the necessity of securing themselves by the hypothecation of the ship, freight, and cargo.

4. The master of the *Onward*, and Messrs. H. and Company, did not communicate to the said shippers of the cargo, or to the defendants who carried on business at Glasgow, as the master knew the intention of hypothecating the ship, freight, and cargo, or the circumstances which might render such hypothecation advisable or necessary, but on the contrary, without reasonable cause or excuse, abstained from so doing, although the comparatively small value of the ship and freight to be earned rendered it all the more important that such communication should have been made.

5. A reasonable and proper time was not allowed to elapse between the advertisements for the bottomry loan, and the acceptance of Messrs. H. and Company's offer to make such loan.

(Title.)

Reply.

1. The plaintiffs say that the defendants, since the 31st day of December, 1868, have been the only persons forming the firm of

T., F., & Co., of Moulmein, mentioned in the third paragraph of the defence.

2. After the master of the *Onward* put into Port Louis as aforesaid, he employed Messrs. *H. and Company* in the claim mentioned as his agents, and by his directions they by letter communicated to the defendants' firms at Moulmein and Glasgow the circumstances of the ship's distress and the estimated amount of her repairs.

3. The said Messrs. *H. and Company* shortly after the said ship was put into their hands at Port Louis, offered the said master, in case he should require them to do so, to make the necessary advances for the ship's repairs, and to take his draft at ninety days' sight on Messrs. *B. Brothers*, of London, at the rate of five per cent. discount for the amount of the advances, together with a bottomry bond on ship, cargo, and freight as collateral security, the bond to be void should the draft be accepted. The said master and the said Messrs. *H. and Company*, by letter, communicated to the owners of the *Onward* the circumstances of the said ship's distress, and the aforesaid offer of the said Messrs. *H. and Company*, and the said master by his letter requested the said owners to give him their directions on the subject. The said owners shortly after receiving such letters, by letter communicated with the defendants at Glasgow, and forwarded to them copies of the said lastly-mentioned letters of the said master and of the said Messrs. *H. & Company*.

4. The defendants' houses at Moulmein and Glasgow respectively received the letters referred to in the second paragraph of this reply in time to have communicated with the said master at Port Louis before the giving of the said bottomry bond.

5. The defendants received the said copies of letters referred to in paragraph 4 of this reply in time for them to have communicated thereon with the said master at Port Louis before the giving of the said bond.

6. The defendants did not at any time answer the said communications of the said Messrs. *H. and Company* or in any way communicate or attempt to communicate with the said master, or to direct him not to give or to prevent him from giving the said bottomry bond on the said cargo.

7. The said bond was duly advertised for sale, and was subsequently, and after a proper interval had elapsed, sold by auction in the usual way. There were several bidders at the sale, and the said Messrs. *H. and Company* were the lowest bidders in premium, and the said bond was knocked down to them. The said bond was not advertised for sale until the said ship was ready for sea, and up to that time the master of the said ship had expected to hear from her owners, and had hoped to be put in funds, and had not finally determined to resort to bottomry of the said ship, or her cargo or freight.

8. Save as herein appears the plaintiffs deny the truth of the several allegations contained in the said answer.

[NOTE.—The facts stated in this reply should, in general, be introduced by amendment into the statement of claim.]

(Title.)

Rejoinder.

The defendants join issue upon the plaintiffs' reply.

15.

PARAGRAPH IN STATEMENT OF DEFENCE IN ACTION OF SALVAGE
ALLEGING AN INEQUITABLE AGREEMENT.

(Title.)

[State the material facts and conclude as follows :—]

7. The said sum of £ was not a reasonable amount for the services to be rendered by the *T.*, but was an exorbitantly excessive amount for such services, and the master of the *T.* in procuring the master of the *M.* (the salvaged ship) to sign the said agreement, took undue advantage of the position in which the master of the *M.* was placed; and the defendants further say that the master of the *M.* had not any authority to enter into the said agreement on behalf of the defendants, and that the said agreement was extorted and improperly obtained from the master of the *M.*, and is wholly unjust and inequitable, and is not binding on the defendants.

8. The defendants are ready and willing to pay to the plaintiffs such reasonable amount for their services as the Court may think just.

[A reasonable sum should be tendered by the defendants to the plaintiffs in such a case.]

16.

PARAGRAPH IN STATEMENT OF DEFENCE IN ACTION OF DAMAGE
CLAIMING LIMITATION OF LIABILITY UNDER S. 54, M. S. A., 1862.

The defendants further say that the matters complained of *[if any such occurred, and if the defendants are liable for them, which they deny on the grounds hereinbefore stated]* constituted a loss or damage by reason of the improper navigation of the said ship *T.*, and the defendants say that the same occurred without the actual fault or priority of the defendants, and that the gross tonnage of the said ship amounted to tons and no more, and the defendants claim that they are not liable in any event in respect of the premises to an aggregate amount exceeding £8 per ton of the said tons. *[The portion in brackets must be omitted if the improper navigation is admitted.]*

17.

CLAIM OF LIMITATION OF LIABILITY UNDER M. S. A., 1862, BY
COUNTERCLAIM.

(Title.)

Statement of Defence and Counterclaim.

1. The defendants in the said original action admit the statements contained in the statement of claim, and that the said collision was occasioned by improper navigation of the said steamship or vessel *C.*, and by way of counterclaim the said defendants say as follows :—

2. The said defendants were before, and at the time of the said collision, the owners of the said steamship *C.*, which is a duly registered British steamship.

3. On the 27th June, 1876, another action, numbered _____, was commenced against the said steamship *C.* by the said owners of cargo, laden on board the said barque and in the statement of claim mentioned, to recover damages for the loss of the said cargo in the said collision, and such action has by order of the Court been consolidated herewith.

4. No other action save as aforesaid has yet been brought against the said defendants or the said steamship *C.* or her freight in respect of the said collision, but the defendants apprehend other claims in respect of a damage to goods, merchandise, and other things on board the said barque *T.*, and also in respect of loss of life and personal injury caused to persons on board of and carried in the said barque *T.* at the time of the said collision.

5. The said collision took place without the actual fault or privity of the said defendants, or either or any of them, and the said defendants submit that they are entitled to the benefit of the provisions of the Merchant Shipping Act, 1854, and the Merchant Shipping Acts Amendment Act, 1862, for limiting their liability in respect of the said collision.

6. The gross tonnage of the said steamship *C.* without deduction on account of the engine room is _____ tons.

7. The said defendants are willing, and they hereby offer to pay in such manner as the Court shall direct, the amount to which they are liable in respect of the said collision, regard being had to the provisions of the Merchant Shipping Act, 1854, and the Merchant Shipping Acts Amendment Acts, 1862.

The said defendants claim :—

1. A declaration that the defendants are not answerable in respect of loss of life or personal injury caused by the said collision, together with loss or damage to ship's boats, goods, merchandise, or other things to an aggregate amount exceeding £15 for each ton of the gross tonnage of the said steamship *C.*, without deduction on account of the engine room, nor in respect of loss or damage to ship's goods, merchandise, or other things on board the said barque *T.* caused by the said collision, to an aggregate amount exceeding £8 for each ton of the gross tonnage of the said steamship *C.* without deduction on account of the engine room.
2. That the said defendants may be at liberty to give bail for such an aggregate amount and for such interest as the Court may think fit to award.
3. That upon the filing of the bail bond all further proceedings in the said actions, numbered _____ and _____ respectively, may be stayed, and the respective plaintiffs in the said actions, and all and every other person and persons claiming in respect of damage or loss to the said barque *T.*, or to her boats, or to any goods, merchandise, or other things on board her, or in respect of loss of life or personal injury occasioned by the said collision, may be restrained from bringing any other action or actions in respect of these said losses or injuries.
4. That all proper directions may be given by the Court for ascertaining the persons who have any just claim in respect of loss or damage to ships, goods, merchandise, and other things caused by the said collision, and in respect of loss of

life and personal injury caused by the said collision, and for the exclusion of any claimants who shall not come in within a certain time to be fixed for that purpose.

5. That the amount of the said defendant's liability may be rateably distributed among the several persons who may establish a claim thereto.
6. Such further and other relief as the nature of the case may require.

18.

PARAGRAPH IN STATEMENT OF DEFENCE IN ACTION OF DAMAGE ALLEGING THAT VESSEL BY WHICH DAMAGE WAS DONE WAS IN CHARGE OF A DULY LICENSED PILOT.

The defendants (further) say that at the time of the alleged collision between the said ships *A.* and *B.*, the *A.* was (as hereinbefore mentioned) by compulsion of law in charge of a pilot duly licensed for the district in which the said ship was at the time of the said collision in the act of being navigated, and that the damage proceeded for [*if caused by the negligent navigation of the ship A., which the defendants deny on the grounds hereinbefore stated*] was caused solely by the negligence of the said pilot who was in sole charge of the said ship and not by any default, negligence, or want of proper care on the part of the *A.*, her owners, master or crew, and that the defendants are not liable for the said alleged damage. [*If the negligence of the pilot is alone relied upon, the portion in brackets must be omitted.*]

19.

PETITION ON PROTEST.

(*Title as in ordinary Actions.*)

A. and *B.*, the solicitors for the defendants, say as follows :—

In action for
necessaries.

1. The plaintiff and the defendants are subjects of his Majesty the King of Greece, and are resident within the Kingdom of Greece.

2. The defendants are the owners of the ship or vessel *Evangelistria*, which is a Greek vessel belonging to the port of Syra, in Greece.

3. On or about the 4th of October, 1874, at Syra aforesaid, by a certain agreement or instrument of mortgage which was made at Syra aforesaid, the said vessel was mortgaged by the defendants to the plaintiff to secure repayment to the plaintiff of the sum of 54,450 drachmas, together with interest at the rate specified in the said agreement.

4. The said sum, as will appear in reference to the said agreement, was advanced, as to one third thereof, for a period of two years from the date of the said agreement, and it was a further condition of the said agreement, that even in case of default in payment of either interest or principal, the said ship should be brought by the plaintiff to Syra, to be there sold or otherwise dealt with. No default has been made in payment of interest pursuant to the said agreement, and no part of the said principal sum is due and payable.

5. The *Evangelistria* lately arrived at the port of Swansea, laden with a cargo of grain from Lagos, and is now lying at the said port of Swansea.

6. On or about the 10th day of May, 1876, the *Evangelistria* was arrested in a suit for necessities, instituted in this Honourable Court by one John Petters.

7. The said necessities, in respect of which the said suit was instituted, were supplied to the *Evangelistria* at Syra aforesaid whilst the said ship was building there. On her completion she was registered as a Greek ship and has since continued so registered. The present plaintiff appeared under protest in the said suit, and has since filed a petition on protest, praying the Court to pronounce against its jurisdiction, on the ground that the claim of the plaintiff in that suit is not a claim for necessities within the meaning of 3 and 4 Vict. c. 65, s. 6, or 24 Vict. c. 10, s. 5.

8. The present suit was commenced by writ dated the 17th of May, 1876, after the said ship had been arrested in the said suit for necessities.

The endorsement on the said writ is in the words and figures following :—

“The plaintiff claims to be the sole owner or mortgagee of the ship *Evangelistria*, of the port of Syra in Greece, and to be entitled to have possession of the said ship decreed to him or to have the said ship sold for the repayment of various sums of money now due and owing to the plaintiff, and the plaintiff claims £3500.”

9. This Honourable Court has no jurisdiction to entertain the said cause of necessities, and by reason thereof the said arrest of the *Evangelistria* is, under the circumstances stated in this petition, irregular and void, and the defendants submit that the said proceedings in the said cause of necessities being null and void, and by reason of the circumstances aforesaid, this Honourable Court has no jurisdiction to entertain this suit.

The defendants therefore pray this Honourable Court :—

1. To pronounce against the jurisdiction of this Honourable Court, and to dismiss this suit with damages and costs.
2. To grant such further or other relief as the nature of the case may require.

Answer to the Petition on Protest.

C. and D., the solicitors for the plaintiff, say as follows :—

1. The plaintiff admits the truth of the first paragraph of the said petition.

2. The plaintiff denies the truth of the second paragraph of the said petition.

3. By an agreement or deed of sale, dated the 21st day of September, 1874, and duly made at Syra, in the Kingdom of Greece, before a notary public, with all the formalities required by the law of Greece, and numbered 15,742, the defendants being owners of the *Evangelistria*, sold to the plaintiff the *Evangelistria* and delivered to him the possession thereof for the price of 54,450 drachmas of Government tariff (Greek) paid to them by the plaintiff.

4. The said agreement was valid and effectual according to the law of Greece to pass the property, ownership, and right of possession of the said ship to the plaintiff, in whom such property and ownership and right of possession have been ever since and are now vested.

5. Such sale to the plaintiff was duly registered on the 23rd day of September, 1874, at the port of Syra aforesaid by the proper authorities, and the plaintiff thereupon became, and has ever since been, and still is the sole registered owner of the said ship.

6. On the 4th day of October, 1874, an agreement (being the agreement mentioned in the fourth paragraph of the said petition) was entered into between the plaintiff and the defendants. Such agreement was and is in the Greek language, and the following is a correct translation thereof [*agreement set out.*]

7. In pursuance of the said agreement the *Evangelistria* proceeded upon several voyages in the charge of and under the command of the defendants, or of one or other of them.

8. Before the *Evangelistria* could leave the Kingdom of Greece to proceed on such voyages the plaintiff was compelled by the law of Greece to give, and he did before she left the Kingdom of Greece, give with the knowledge of the defendants, a bond to the proper authorities in two-thirds of the value of the *Evangelistria* conditioned for the return of the *Evangelistria* to the Kingdom of Greece within the period of two years from the date of her so leaving Greece. The said period of two years will expire in the month of September now next ensuing.

9. The plaintiff denies the allegations contained in the fourth paragraph of the said petition, and says that the said sums of 54,450 drachmas and 5381 10 per cent. drachmas are still owing to the plaintiff, and that the defendants have made default in the payment of interest due under the terms of the said agreement of the 4th day of October, 1874, and that large sums of money are now due and owing to the plaintiff from the defendants in respect of such interest.

10. On or about the 15th day of October, 1875, the plaintiff instituted a suit in the commercial division of the Court of First Instance at Syra aforesaid, being a Court of competent jurisdiction in that behalf against the defendants, and prayed the said Court by reason of such default as aforesaid, and upon other grounds, to order that the defendants or such one of them as was acting as master of the *Evangelistria*, should be substituted by a man of his (the plaintiff's) confidence, and that the said ship should be brought to Syra, and that a provisory execution of the decision should be ordered as well as the personal arrest of the defendants, and that the defendants should pay the costs.

11. The defendants were duly summoned to appear in the said suit in accordance with the law of Greece, but failed to appear therein.

12. On the 22nd day of April, 1876, the said suit was heard before the said Court, and the said Court delivered judgment therein, and ordered expulsion of the defendants from the said ship, and that they should be substituted by a captain enjoying the plaintiff's confidence, and ordered the personal arrest of the defendants, and condemned them in costs, and requested the proper officers to execute or assist in executing the said judgment.

13. By order of such judgment the Greek consular authorities in this country, being the proper authorities in that behalf, dismissed the defendants from the said ship on her arrival at Falmouth on or about the 28th day of April, 1876, and put on board her a person appointed by the plaintiff and enjoying his confidence, and put her

into the possession of such person on behalf of the plaintiff, and such person took the said ship from Falmouth to Swansea to discharge her cargo.

14. On the arrival of the said ship at Swansea the defendants, against the will of the plaintiff and of the said consulate authorities, forcibly ejected the said master so appointed by the plaintiff from the said ship, and forcibly took possession of her, and they remain in possession of her against the will of the plaintiff and of the said consulate authorities.

15. By the law of Greece all persons in charge of any Greek vessel entering a foreign port are required to deposit all the ship's papers with the Greek consular officer at such port. On the arrival of the said ship at Swansea, the vice-consul of Greece at that port, being such consular officer as aforesaid, applied to the defendants and required them to deposit such papers with him. Such papers include the libretto or certificate of registry, showing the ownership of the said ship. The defendants have refused and still refuse so to deposit such papers, and the plaintiff is unable to obtain possession of the said papers, including the said libretto, although such libretto shows the plaintiff to be sole owner of the said ship.

16. The plaintiff admits the truth of the allegations contained in the sixth and seventh paragraphs of the said petition.

17. The defendants have threatened and intend, unless prevented by this Court, to take the *Evangelistria* to South America, or to some other foreign port or place not being a Greek port or place, and to deprive the plaintiff of the power of taking the *Evangelistria* to Greece within the time allowed by the said bond, and of the power of selling the *Evangelistria* at Syra under the said agreement of the 4th day of October, 1874, and they refuse to give up possession of the said ship to the plaintiff, and the plaintiff cannot obtain possession of the said ship or of her papers without the assistance of this Honourable Court.

The plaintiff prays this Honourable Court to pronounce for the jurisdiction of this Court, and to overrule the petition on protest, and to condemn the defendants in costs, and to give such further relief as may be required.

Conclusion.

C. and D., solicitors for the plaintiff, say they do not plead further, and pray that the pleadings may be concluded.

Dated the 2nd August, 1876.

Reply.

We, A. and B., solicitors for the defendants, say that we deny the statements in the plaintiff's answer, except so far as consistent with the statements in defendant's petition, and we join issue thereon.

PETITION IN OBJECTION TO THE REGISTRAR'S REPORT.

(Title.)

P. and S., solicitors for the defendant in a cause of necessities, instituted by transfer from the County Court of Northumber-

land, holden at Newcastle-upon-Tyne, on behalf of John Freeland Fergus Common, of South Shields, in the county of Durham, shipbuilder, against the vessel *Turliani*, and against Basilio Papayanni, of Liverpool, shipowner, the attorney lawfully appointed of Demetrio Vafiadachi, of Syra, the mortgagee of the *Turliani*, intervening for petition in objection to the registrar's report, say as follows :—

1. On the 10th day of December, 1874, the right honourable the judge referred the plaintiff's claim in this cause, among others, to the registrar to examine and report thereon as usual. The reference was heard by the registrar on the 29th day of December, 1874, and the 4th day of January, 1875, and on the 6th day of the said month of January the registrar made his report as to all the matters referred to him. The defendant's solicitors crave leave to refer to an office copy of the said report which is filed in this cause, and to the registrar's notes of the evidence given on the said reference, and to the reasons for the said report.

2. The *Turliani* was a Greek brig of about 274 tons register. She was built at Syra in the latter part of the year 1872, and was fastened with iron bolts. She was owned in moities by John Zancopulo, master mariner, and Zanni L. Companis, mariner. Zancopulo was master of the *Turliani* until the month of February, 1874, and Companis was a seaman on board her.

3. In or about the month of February, 1874, the *Turliani*, in consequence of damage received at sea, put into Cuxhaven, where she was caulked and some repairs were done to her. The said John Zancopulo, finding it expedient to remain for a time at Cuxhaven, instructed the said Companis to take the *Turliani* to Swansea, where the said Zancopulo had arranged a charter for her, and where he intended to rejoin her.

4. The *Turliani* accordingly proceeded to sea in charge of a pilot, but instead of going to Swansea the said Companis proceeded with the *Turliani* to North Shields, where she arrived on or about the 4th of March, 1874. The *Turliani* was then in good repair and seagoing condition, and not in want of any repairs, except some caulking and slight repairs to her upper works.

5. The said Companis, without the knowledge or sanction of the said Zancopulo, and before the arrival of Zancopulo at North Shields, employed the plaintiff to do the caulking and repairs mentioned in the preceding article, and to sheath the *Turliani* with yellow metal, and the sum allowed by the registrar to the plaintiff in this cause is the amount of his account for the said repairs and metalling.

6. It was most imprudent and improper to metal the *Turliani*, she being an iron-fastened vessel. It was impossible to place the metal in contact with the iron in consequence of the galvanic action which would thereby be produced upon the metal, and it was consequently necessary to take unusual precautions to prevent the contact of the metal with the iron bolts, and the expense of metalling the *Turliani* was thereby largely increased.

7. At the time of so metalling the ship the plaintiff well knew that the *Turliani* was an iron-fastened vessel, and was aware of the consequent impropriety and imprudence of metalling her.

8. On the 6th day of January, 1875, the plaintiff, John Freeland Fergus Common, attended before the registrar in the registry of this honourable Court to explain a mistake in the plaintiff's account in

another cause against the *Turliani*, and the said John Freeland Fergus Common thereupon, in the presence of the solicitors for the plaintiff and defendant, stated to the registrar that he knew that the *Turliani* was an iron-fastened ship, and that he was aware of the imprudence of metalling the vessel, but that in consequence of the said Companis directing the vessel to be metalled, he took care before placing the metal on the vessel to cover the heads of the iron bolts with white lead, and then to place pieces of sheet lead over each bolt and nail it on with copper or yellow metal nails.

9. By reason of the premises the defendant's solicitors submit :—

- a. That it was not necessary or proper to metal the *Turliani*.
- b. That under the circumstances hereinbefore pleaded the plaintiff's claim, in so far as the metalling is concerned, is not a claim for necessities within the true intent and meaning of the 3 and 4 Vict. c. 65, s. 6.
- c. That the claim of the plaintiff for metalling the *Turliani* ought to be postponed to the claim of the defendant as mortgagee.

Wherefore the said defendant prays the right honourable the judge to refer the said report back to the registrar, with directions to amend the same, in so far as it reports in favour of the priority of the plaintiff's claim for metalling the *Turliani* over the defendant's, and to condemn the plaintiff in so much of the costs of the said reference as relate to their said claim, and in the costs of this objection, and that otherwise justice may be administered to the defendant in the premises.

Answer.

I. and G., solicitors for John Freeland Fergus Common, of South Shields, in the county of Durham, shipbuilder, the plaintiff in this cause, in answer to the petition of Basilio Papayanni, of Liverpool, shipowner, in objection to the registrar's report, say as follows :—

1. They admit the truth of the allegations contained in paragraph 1 of the said petition, and crave leave to refer to the said report and registrar's notes and reasons.

2. They admit the truth of the allegations contained in the 2nd paragraph of the said petition, but further say that upon the said John Zancopulo and Zanni L. Companis becoming co-owners of the *Turliani*, it was agreed between them that when the said John Zancopulo should be on shore, the said Zanni L. Companis should be her master and have the control of her and of her affairs.

3. As to the 3rd and 4th paragraphs of the said petition—The *Turliani*, after leaving Cuxhaven, met with contrary winds, in consequence of which the said Companis, who was then her master and had the management of her affairs, took her into North Shields, where she arrived as in the said petition stated. The said Companis was then still owner of a moiety of the *Turliani*. On her so arriving at Shields she was in want of caulking and repairs to her upper works, and she was not metalled. The plaintiff was not aware of any such directions having been given by Zancopulo to Companis as stated in the said petition until the hearing of the reference in this cause by the registrar.

4. As to the 5th paragraph of the said petition—After such arrival at Shields, the said Companis being such master and part owner of the *Turtiani* and having the management of her affairs, chartered her to proceed on a voyage to Buenos Ayres, and he employed the plaintiff to do the necessary caulking and repairs to the *Turtiani*, and to sheath her with yellow metal, and the plaintiff accordingly, by the direction of the said Companis and of the surveyors employed by or on behalf of her owners or underwriters, did such caulking and repairs and sheathed her with yellow metal, and the sum allowed by the registrar is the amount of the plaintiff's account for such caulking, repairs and metalling.

5. As to the 6th and 7th paragraphs of the said petition—In order that the *Turtiani* might perform either the voyage contemplated by Zancopulo, which was a voyage to Sierra Leone and other places on the voyage to Buenos Ayres, it was necessary to metal her, notwithstanding that she was iron-fastened. It was not imprudent or improper to metal her, provided proper precautions were taken to prevent galvanic action, and proper precautions were taken by the plaintiff, who knew the said vessel was iron-fastened, to prevent such galvanic action. The precautions taken were such as are usual in metalling iron-fastened vessels. The expense of metalling was thereby necessarily larger than it would have been if the *Turtiani* had been a copper-fastened vessel. Save as herein appears the plaintiff denies the truth of the allegations in the said 6th and 7th paragraphs.

6. As to the 8th paragraph of the said petition—The plaintiff stated that after the *Turtiani* came into dock he found that she was an iron-fastened ship, and in the sense that it would have been better to have replaced the iron fastenings with copper, if possible, before metalling the vessel, he stated that he was aware of the imprudence of metalling her, meaning that it would be imprudent unless proper measures were taken with regard to the bolts, and he stated that in consequence of Companis and the surveyors of the vessel directing her to be metalling, iron-fastened as she was, and ordering that before placing the metal on the vessel he should take the usual precautions, namely, those of covering the heads of the iron bolts with white lead and then placing pieces of sheet lead over each bolt, and nailing such pieces on with copper or yellow metal nails: he followed such orders and took such precautions. Save as herein appears the plaintiff denies the truth of the said 8th paragraph.

7. The plaintiff submits that his said claim was properly allowed by the registrar, and that it is entitled to priority over the claim of the defendants as mortgagees.

And the said *I.* and *G.* pray the right honourable the judge to confirm the report of the registrar, and to reject the prayer of the said petition, and to condemn the said Basilio Papayanni in the costs of these proceedings in objection to the said report, and that further and otherwise right and justice may be administered in the premises.

Reply and Conclusion.

P. and *S.*, solicitors for the defendant in a cause of necessities instituted by transfer from the County Court of Northumberland, holden at Newcastle-upon-Tyne, on behalf of John Freeland Fergus Common, of South Shields, in the county of Durham, ship-

builder, against the vessel *Turliani*, and against Basilio Papayanni of Liverpool, shipowner, the attorney lawfully appointed of Demetrio Vafiadachi, of Syra, the mortgagee of the *Turliani*, intervening in reply to the answer of the plaintiff, deny the statements made therein, save in so far as the same admit the truth of the statements made in the petition of the defendant, and pray that the pleadings be concluded.

[Registrar's Report and Schedule of Claim, and the reasons for the decision must be appended]

APPENDIX VI.

PART II.

PRECEDENTS OF BILLS OF COSTS (a).

FORM A.

The Humboldt.

(Plaintiffs' costs in an action for salvage up to tender, for which the Court pronounced. For defendants' costs after tender, see Form B.)

Easter Sittings.

1876.		Lower Scale.		
		£	s.	d.
April 20th.	Instructions to sue	0	6	8
	Writ of summons <i>in rem</i> ; copy to file and attending to issue	0	6	8
	Special indorsement	0	2	6
	Copy writ for service, fcs. 4, beyond 2	0	1	4
	Attending Messrs. A. & B., procuring their undertaking to appear, &c.	0	6	8
21st.	Notice to Messrs. A. & B. to compel their undertaking to give bail, &c. (in caveat warrant), that they had not undertaken to prove values, and unless they prove values at once I must arrest if they do not keep the property within the jurisdiction so that the values may be tested; copy and service	0	4	0

(a) The following Forms—the proofs of which were most kindly corrected by the Deputy Registrar of the Admiralty Division—are taken from bills actually taxed. The items and amounts in these precedents are those allowed on taxation; but some items are allowed or disallowed according to the circumstances of the case, so that no precedent can be an infallible guide.

	Lower £ s d
22nd. Perusing and considering notice of appearance	0 3 4
Perusing and considering notice of bail	0 3 4
Attending looking up bail bond as perfected, and making inquiries as to sureties	0 6 8
Notice to the defendants' solicitors not to let the vessel go away on her intended voyage to the Brazils without examining their witnesses, otherwise I must press for trial without them; copy and service	0 4 8
Drawing retainer and attending retaining Mr. A.	0 3 4
Paid his fee and clerk	1 3 8
Instructions for statement of claim	0 13 4
Drawing same, fos. 26	1 6 8
Attending Mr. B., seeing him to settle same	0 6 8
Paid his fee and clerk	2 4 8
26th. Copy statement of claim for the printer	0 5 8
Correcting the press	0 4 4
Paid printer's bill	1 8 8
Copy statement to deliver	0 4 4
Service thereof	0 3 4
May 11th. Summons for order on defendants to prove values	0 3 4
Copy for the judge	0 3 4
Paid fee thereon	0 2 4
Copy for service	0 1 4
Service thereof	0 2 6
Perusing summons for order for time to deliver defence	0 1 4
12th. Attending same; order made for a week	0 6 8
Attending summons for order to prove values; order made	0 6 8
Paid for same	0 3 0
Copy for service	0 1 0
Service thereof	0 2 6
19th. Perusing statement of defence	0 6 8
Demand for ten copies	0 1 6
Service thereof	0 2 6
Paid for ten copies	0 3 3
Perusing notice of tender	0 3 4
Copy for you	0 1 8
* Perusing and considering the outport charges, fos. 8	0 2 8
Copy thereof for registrar to tax	0 2 8
The like for the adverse solicitors	0 2 8
Drawing bill of costs for taxation, and copy to tax, fos. 14	0 14 0
Service of bill of costs on adverse solicitors	0 2 6
Attending lodging bills and obtaining appointment to tax	0 3 4
Attending taxation	0 6 8

* The outport charges must be delivered in for taxation in the bill of costs. *The City of Brussels*, 4 L. R. Ad. 194.

						Lower Scale.		
						£	s.	d.
Attending agreeing costs as taxed	...	...	...	...	...	0	3	4
Perusing summons and attending adverse solicitors								
consenting to their taking money out of Court	...	...	...	...	...	0	6	8
Attending receiving amount of salvage and costs,								
giving receipt and stamp	...	...	...	...	...	0	6	9
Sittings fee	...	...	...	...	...	0	15	0
Letters	...	...	...	...	...	0	6	0
Postages, &c.	...	...	...	...	...	0	3	6
Taxing fee	...	...	...	...	...			
* Outport charges	...	...	...	...	...	20	0	0

FORM B.

The Humboldt.

(Defendants' costs in an action for salvage after tender, for which the Court pronounced. For plaintiffs' costs up to tender, see Form A.)

						Lower Scale.		
						£	s.	d.
1876.								
July 3rd. Attending Mr. W. and taking instructions for								
affidavit to prove the absence of the vessel and								
witnesses	...	...	...	...	...	0	6	8
Drawing affidavit	...	...	...	...	...	0	4	0
Engrossing same	...	...	...	...	...	0	1	4
Writing adverse solicitor thereon	...	...	...	...	...	0	3	6
Nov. 2nd. Term fee	...	...	...	...	...	0	15	0
Writing adverse solicitor, referring him to our former								
letter	...	...	...	...	...	0	3	6
Dec. 9th. Term fee	...	...	...	...	...	0	15	0
1877.								
Feb. 20th. Drawing affidavit	...	...	...	...	...	0	4	0
Engrossing same	...	...	...	...	...	0	1	4
Attending on Mr. H., reading over same, and attend-								
ing him on being sworn	...	...	...	...	...	0	6	8
Paid oath	...	...	...	...	...	0	1	6
Copy affidavit for adverse solicitor	...	...	...	...	...	0	1	4
Drawing memorandum, filing same and attendance	...	...	...	...	...	0	3	4
Stamp and copy	...	...	...	...	...	0	2	0
Perusing affidavit of Mr. H. in support of sum-								
mons	...	...	...	...	...	0	2	4
Instructions for affidavit to oppose summons	...	...	...	...	...	0	6	8
Drawing same	...	...	...	...	...	0	8	0
Engrossing same	...	...	...	...	...	0	2	8
Attending being sworn and paid	...	...	...	...	...	0	8	2
Copy for adverse solicitor	...	...	...	...	...	0	2	8
Attending him therewith	...	...	...	...	...	0	2	6

* These various items of the charges should be set on a separate sheet.
See note preceding page.

				Lower Scale.		
				£	s.	d.
	Drawing minute, filing same, and attendance	...	...	0	3	4
	Stamp and copy	...	...	0	2	0
	Drawing brief for counsel to oppose, summons and copy	...	...	0	13	4
	Copy affidavits	...	...	0	6	8
	Attending Mr. P. and feeing him to attend summons	...	...	0	6	8
	Paid his fee and clerk	...	...	2	4	6
	Attending summons. Judge did not fix a day	...	...	0	6	8
April 21st.	Attending summons; order made	...	...	0	6	8
	Instructions for affidavit of discovery	...	...	0	6	8
	Drawing same	...	...	0	6	0
	Engrossing same	...	...	0	2	0
	Writing agent at Liverpool therewith	...	...	0	3	6
	Attending notary with extract from log-book for translation	...	...	0	6	8
27th.	Attending on adverse solicitor on his inspection of documents	...	...	0	6	8
	Attending engaging interpreter	...	...	0	6	8
	Instructions for brief	...	...	2	0	0
	Drawing same	...	...	2	16	0
	Copy for Mr. B...	...	...	0	15	4
	Like of pleadings, and protest and deposition	...	...	0	17	0
	Copy brief for Mr. P.	...	...	0	15	4
	Like of pleadings and documents	...	...	0	17	0
	Attending Mr. B. and feeing him for hearing	...	...	0	6	8
	Paid his fee and clerk	...	...	16	5	0
	Copy brief for Mr. B.	...	...	0	15	4
	Like of pleadings and documents	...	...	0	17	0
	Attending Mr. P. and feeing him for hearing	...	...	0	6	8
	Paid his fee and clerk	...	...	11	0	0
	Attending Mr. B. and appointing consultation	...	...	0	6	8
	Paid his fee and clerk	...	...	2	9	6
	Like attendance on Mr. P.	...	...	0	3	4
	Paid his fee and clerk	...	...	1	3	6
	Drawing præcipe for subpoena and attendance	...	...	0	6	8
	Paid stamp thereon	...	...	0	1	0
	Writing agent at Yarmouth therewith	...	...	0	3	6
May 28th.	Attending consultation	...	...	0	13	4
	Attending hearing, when the judge, after hearing evidence and counsel, pronounced for the tender with costs	...	...	3	3	0
	Paid interpreter	...	...	4	4	0
	Perusing letter from agent at Liverpool relative to payment to master and other witnesses, writing in reply	...	...	0	3	6
	Drawing bill of costs from tender	...	...	1	0	0
	Paying outports	...	...	0	6	8
	Perusing and copy agent's charges	...	...	0	13	4
	Attending adverse solicitors with costs	...	...	0	2	6
	Attending filing costs	...	...	0	3	4
	Attending taxation	...	...	0	16	8
	Paid stamp thereon	...	...	1	15	6
	Attending agreeing amount of taxed costs	...	...	0	6	8
	Attending receiving same	...	...	0	6	8

APPENDIX.

ccxlix

					Lower Scale.		
					£	s.	d.
Attending obtaining decree	...	...	...	...	0	6	8
Paid stamp thereon	...	...	...	...	0	10	0
Copy and service	...	...	...	...	0	6	8
Paid fee on examination of witnesses	...	...	...	...	0	12	0
Term fee	...	...	...	...	0	15	0
Out-port charges							

FORM C.

The Emerald.

(Plaintiffs' costs in an ordinary action for damage by collision with numerous interlocutory proceedings.)

					Lower Scale.		
					£	s.	d.
1876.							
June 16th.	Instructions to sue	...	...	...	0	6	8
	Writ of summons	...	...	...	0	6	8
	Paid stamp thereon	...	...	...	0	5	0
	Endorsement of claim	...	...	...	0	2	6
	Writing Mr. B., agent for owners of <i>Emerald</i> , informing him of action which had been entered against the <i>Streamlet</i> , and requiring him to appear and give bail to action without expense of an arrest	...	...	...	0	3	6
30th.	Writing Mr. B., requiring him to arrange for appearance and bail to be given to action at once as I was instructed to proceed	...	...	...	0	3	6
July 3rd.	Making copy writ for service, extra length	...	...	...	0	3	0
	Attending adverse solicitors therewith and obtaining their undertaking to appear	...	...	...	0	6	8
	Attending adverse solicitors when they served me with note of appearance, and perusing same	...	...	...	0	3	4
11th.	Attending adverse solicitors when they served me with notice of bail having been given by commission, and perusing same	...	...	...	0	3	4
	Attending making enquiries as to the sufficiency of the proposed sureties	...	...	...	0	6	8
	Afterwards attending searching as to due execution of bail bond, and paid search	...	...	...	0	7	8
14th.	Instructions to defend counter-claim	...	...	...	0	6	8
	Preparing praecipe for commission to take bail, and attending in the registry filing same	...	...	...	0	6	8
	Paid stamp on	...	...	...	0	5	0
	Paid for commissioner under seal, and executing	...	...	...	2	0	2
	Writing client therewith and thereon for execution	...	...	...	0	3	6
	Attending adverse solicitors, when they served me						

	Lower Scale.		
	£	s.	d.
with copy summons to direct me to give bail to answer counter-claim, and perusing same ...	0	1	8
18th. Attending summons; order made for plaintiffs to give bail to answer defendants' counter-claim within three days ...	0	6	8
25th. Attending Mr. L. before a commissioner on his signing bail bond ...	0	6	8
Paid commissioner for executing bail papers, one surety ...	1	1	0
Drawing and engrossing, notice of bail having been given by commissioner ...	0	1	6
Attending adverse solicitors, serving them therewith ...	0	2	6
Drawing and engrossing affidavit as to service of notice of bail ...	0	6	6
Attending to be sworn thereto, and paid oath ...	0	8	2
Attending on the registry filing bail papers ...	0	6	8
Paid stamps thereon ...	0	8	0
October. Attending retaining Mr. C. ...	0	3	4
Paid his fee and clerk ...	1	3	6
Instructions for drawing and engrossing Preliminary Act ...	0	6	8
Instructions for statement of claim ...	0	13	4
Drawing same ...	0	10	0
Attending Mr. C. with copy of statement of claim, and seeing him to peruse and settle same ...	0	6	8
Paid his fee and clerk's ...	2	4	6
Attending counsel on conference on his finally settling statement of claim ...	0	6	8
Copy statement of claim for printer ...	0	3	4
Examining proof sheet of statement of claim ...	0	1	6
Paid printer's account ...	1	7	6
Attending in the registry searching if defendants' Preliminary Act filed, found it was not, and filing plaintiffs' Preliminary Act ...	0	6	8
Paid searching ...	0	1	0
Paid stamp on Preliminary Act ...	0	5	0
Notice to adverse solicitors that I had filed Preliminary Act, and requiring them to file their Preliminary Act at once and service ...	0	4	0
Summons to direct the defendants to file their Preliminary Act; pleadings to be delivered notwithstanding the vacation ...	0	3	8
Paid stamp on summons ...	0	2	0
Copy summons to file ...	0	2	0
Copy and service of summons on adverse solicitors ...	0	3	6
11th. Attending summons; order made for Preliminary Act to be filed in ten days ...	0	6	8
Paid for order ...	0	3	0
Copy and service of order on adverse solicitors ...	0	3	6
24th. Defendants having filed their Preliminary Act, making copy statement of claim to deliver ...	0	1	6
31st. Attending delivering same ...	0	3	4

	Lower Scale.		
	£	s.	d.
Attending adverse solicitors, when they served me with copy summons to direct plaintiffs to furnish particulars of claim, and perusing same	0	1	8
Sittings fee	0	15	0

Michaelmas Sittings.

Nov. 1st. Attending summons for particulars of claim ; order made for same to be delivered within a week	0	6	8
9th. Drawing and engrossing particulars of plaintiffs' claim	0	9	0
Attending adverse solicitors, serving them therewith	0	2	6
11th. Summons to direct an early day to be appointed for hearing of cause as plaintiffs were detaining witnesses	0	3	0
Paid stamp on summons	0	2	0
Copy summons to file	0	2	0
Copy and service of summons on adverse solicitors	0	3	6
14th. Attending summons for day for hearing ; same adjourned till Friday	0	6	8
Writing client as to an offer made by defendants	0	3	6
16th. Having received instructions from client, writing adverse solicitors refusing offer, saying that my client was incurring expenses of over £10 per week on account of detention of witnesses	0	3	6
17th. Attending adjourned summons before registrar ; order made for cause to be heard on the 29th instant	0	6	8
Paid for order	0	3	0
Copy and service of order on adverse solicitors	0	3	6
Subpcena ad test.	0	6	8
Paid stamp	0	2	6
Copy and service of same on R.	0	6	8
Writing client informing him of the day appointed for hearing of cause, and requiring him to arrange for the attendance of witnesses	0	3	6
21st. Attending adverse solicitors, when they waited upon me and stated that, owing to the absence of their witnesses they could not have cause heard on the 29th instant, and writing me to consent to a postponement of hearing, conferring thereon, when I informed them that I could not consent to any postponement as I was detaining witnesses at great expense, when they were to apply to the Court	0	6	8.
22nd. Attending adverse solicitors, when they served me with copy summons to direct hearing of cause to be postponed, and to allow them further time for delivering statement of defence, and perusing same	0	1	8

	Lower Scale.			
	£	s.	d.	
Perusing affidavit in support	0	3	4	
24th. Attending summons; order made postponing cause until a day to be arranged; defendants also allowed three days further time for delivering statement of defence... ..	0	6	8	
Preparing telegram to client, informing him of postponement of hearing and requiring him to stop attendance of witnesses; afterwards attending and dispatching same and paid	0	7	8	
Attending adverse solicitors in the registry, when the hearing of cause was appointed for the 15th prox.	0	6	8	
Writing client informing him thereof	0	3	6	
Attending R. with notice of postponement of action and arranging for him to attend hearing on his subpoena on the 15th prox., without expense of fresh subpoena	0	6	8	
27th. Summons to direct defendants to file affidavit of documents	0	3	0	
Paid stamp on summons	0	2	0	
Copy summons to file	0	2	0	
Copy and service of summons on adverse solicitor	0	3	6	
28th. Attending adverse solicitors, when they served me with copy summons to direct me to file affidavit of documents, and perusing same	0	1	8	
Dec. 1st. Attending summons for discovery of documents; order made for affidavit to be filed within a week	0	6	8	
Paid for order	0	3	0	
Copy and service of order on adverse solicitors	0	3	6	
Attending defendants' summons for discovery; order made for affidavit to be filed in a week	0	6	8	
3rd. Attending adverse solicitors, when they served me with printed copy of statement of defence, and perusing same	0	6	8	
Attending adverse solicitors, bespeaking and afterwards obtaining further copies of statement of defence	0	4	0	
Paid for same	0	4	2	
Instructions for affidavit of documents	0	6	8	
Drawing affidavit	1	4	0	
Engrossing same	0	8	0	
Writing client, enclosing affidavit to be sworn	0	3	6	
Agents attending clients to be sworn to affidavit, and paid oath	0	8	2	
Instructions for reply in answer to defendants' counter-claim	0	13	4	
Drawing reply	0	5	0	
Attending Mr. C. with copy reply, and seeing him to settle same	0	3	4	
Paid his fee and clerk	1	3	6	
Copy reply to deliver	0	1	0	
Attending adverse solicitors, delivering same	0	3	4	

APPENDIX.

ccliii

	Lower Scale.		
	£	s	d.
Attending adverse solicitors, bespeaking and afterwards obtaining copy of defendant's Preliminary Act for the printer	0	4	0
Perusing and considering same	0	3	4
Copy plaintiffs' Preliminary Act for the printer	0	3	6
The like reply	0	1	0
Attending adverse solicitors, and in the registry examining proof sheet of Preliminary Acts	0	3	4
Paid stamps	0	1	6
Paid printer's account	1	1	0
Copy reply and Preliminary Acts for delivery	0	1	8
Attending delivering same	0	2	6
Two copies Preliminary Acts, and reply for the Court	0	3	4
The like statement of claim	0	3	0
The like statement of defence	0	3	0
Attending deposing pleadings in Court	0	3	4
Attending setting cause down	0	6	8
Paid stamps	1	0	0
Preparing præcipe for Trinity masters, and attending in the registry filing same	0	6	8
Paid stamp on præcipe	0	10	0
Drawing and engrossing notice of trial	0	3	4
Attending adverse solicitors therewith	0	2	6
8th Attending adverse solicitors, and arranging for a mutual inspection of documents on both sides without an application to the Court	0	6	8
9th Having received letter from adverse solicitors requiring a further postponement of hearing, attending them in consequence thereon, informing them I was detaining witnesses at great expense, and could not, therefore, consent to any postponement, and they were to apply to the Court thereon if necessary	0	6	8
11th. Drawing and engrossing notice to produce	0	5	0
Attending adverse solicitors, serving them therewith	0	2	6
12th. Attending adverse solicitors, when they served me with copy summons to direct the hearing of cause to be further postponed, and perusing same	0	1	0
13th. Attending summons ; order made for hearing of cause to be postponed until the 19th instant	0	6	8
Preparing telegram to client, informing him of the date appointed for hearing of cause, and advising as to the attendance of witnesses ; afterwards attending despatching telegram, and paid	0	7	8
Attending one of the witnesses in consequence and arranging for him to stay in London until trial	0	6	8
Like attendance on Captain J.	0	6	8
Perusing notice to produce	0	6	8
Attending adverse solicitors, when they handed me certified copy of statement of master of the <i>Streamlet</i> before receiver of wreck, and inspecting and admitting	0	6	8

	Lower Scale.		
	£	s.	d.
15th. Notice to adverse solicitors that I was ready to exchange affidavits of documents, and service ...	0	4	0
Copy plaintiffs' affidavit of documents for adverse solicitors	0	8	0
Attending in the registry filing original	0	3	4
Paid stamp thereon	0	2	5
Attending adverse solicitors exchanging copy affidavits	0	2	6
Perusing and considering defendants' affidavit of documents	0	3	4
Attending adverse solicitors, giving them an inspection of log-book and other documents of <i>Streamlet</i>	0	6	8
Attending adverse solicitors, inspecting documents of <i>Emerald</i> , and bespeaking copies	0	6	8
Paid for same, ...	0	6	0
18th. Attending retaining Mr. M., Q.C.	0	3	4
Paid his fee and clerk	1	3	6
Instructions for brief, attendances on witnesses, &c.	6	6	0
Drawing brief	3	15	0
Copy for Mr. M., Q.C., including documents, 90 fos.	1	10	0
Copy for Mr. C.	1	10	0
Two copies plaintiffs' notice to produce, to annex ...	0	4	0
The like defendants' notice to produce	0	4	0
Two copies statements before receiving of wreck, for counsel	0	16	0
Two copies for counsel	0	9	4
Two copies plaintiffs' affidavit of documents for counsel	0	13	4
The like defendants' affidavit	0	16	0
Two copies statement of claim for counsel	0	3	0
Two copies statement of defence	0	3	0
Two copies Preliminary Acts	0	3	4
Two copies do., reply	0	3	4
Attending Mr. M., Q.C., with brief and papers, and feeing him for the hearing	0	13	4
Paid his fee	21	0	0
Paid his clerk	0	15	0
Attending Mr. C. with brief and papers, and feeing him for the hearing	0	6	8
Paid his fee	15	15	0
Paid his clerk	0	10	0
Attending Mr. M., Q.C., and feeing him for consultation	0	6	8
Paid his fee and clerk	2	9	6
Attending Mr. C., and feeing him for consultation	0	3	4
Paid his fee and clerk	1	3	6
Writing shorthand writer to attend hearing	0	3	6
Attending consultation with both counsel	0	13	4
Paid for room	0	5	0

	Lower Scale.		
	£	s.	d.
Attending Court all day on hearing of cause, when the judge found the <i>Emerald</i> alone to blame for collision and condemned her owners in damages and costs and clerk's attendance with witnesses ...	3	3	0
Paid on production of witnesses	1	14	0
Notice to clients of result of hearing	0	3	6
Attending the witnesses and arranging amount of their expenses, and paying them on account of their detention	0	6	8
Attending bespeaking and afterwards obtaining final decree under seal	0	6	8
Paid stamp thereon	0	10	0
Copy and service of decree on adverse solicitors ...	0	4	6
Paid shorthand writer's account and attendance ...	2	2	0
Attending paying Trinity master's fees	0	6	8
Paid same	8	8	0
Sittings fee	0	15	0

Hilary Sittings.

1877. Feb. 6th. Instructions for claim	0	6	8
Drawing claim	0	12	0
Engrossing same	0	4	0
Copy for adverse solicitors	0	4	0
Perusing and considering report of survey	0	2	0
Copy for adverse solicitors	0	2	0
Copy for use of cause	0	2	0
Perusing and considering accounts and vouchers ...	1	6	8
Copy for adverse solicitors	1	6	8
Copy for use of cause	1	6	8
Attending adverse solicitors, serving them with copy claim and proofs	0	2	6
Writing adverse solicitors, informing them that I would not file original claim for a few days to enable them to settle same without reference if possible	0	3	6
17th. On receipt of letter from adverse solicitors offering £450 in settlement of claim, and writing clients informing them thereof, and requiring instructions	0	3	6
23rd. Having received letter from clients with instructions, writing adverse solicitors informing them that my clients would be considerable losers even if they received the total amount claimed, but with a view to a settlement offering to accept £475	0	3	6
Several attendances on adverse solicitors, and ultimately settling claim for £459 and costs	0	13	4
Attending adverse solicitors, obtaining cheque for agreed damages, and giving receipt and stamp ...	0	6	9
Drawing affidavit of increase	0	18	0
Engrossing same	0	6	0
Attending deponent to be sworn thereto and paid oath	0	8	2
Copy affidavit for adverse solicitors	0	6	0
Paid stamp on affidavit	0	2	0

					Lower Scale.		
					£	s.	d.
Drawing bill of costs	}	...	...	...	3	8	0
Copy for the registrar							
Copy for adverse solicitors							
Perusing and considering country agent's expenses...					0	1	8
Copy for the registrar	...	...	...	...	0	1	8
Copy for adverse solicitors	...	...	...	...	0	1	8
Attending adverse solicitors with bill of costs for taxation	...	...	...	...	0	3	4
The like attendance in the registry	...	...	...	...	0	3	4
Attending taxation	...	...	...	...	1	0	0
Attending agreeing costs as taxed	...	...	...	...	0	6	8
Attending adverse solicitors, obtaining cheque for taxed costs, and giving receipt and stamp	...	...	...	...	0	6	9
Sittings fee	...	...	...	...	0	15	0
Postage	...	...	...	...	0	5	0

FORM D.

The Egbert.

(Plaintiffs' costs in an ordinary action for damage by collision.)

					Higher Scale.		
					£	s.	d.
1876.							
Sept. 25th. Instructions to sue	...	...	...	...	0	13	4
Writ of summons	...	...	...	...	0	13	4
Paid stamp on writ	...	...	...	...	0	10	0
Endorsement of claim	...	...	...	...	0	2	6
Drawing affidavit to lead warrant	...	...	...	...	0	5	0
Engrossing same	...	...	...	...	0	1	8
Attending to be sworn thereto, and paid oath	...	...	...	...	0	8	2
Paid filing	...	...	...	...	0	2	0
Copy writ for service (extra 6 fos. length)	...	...	...	...	0	1	4
Writing agents at Southampton with writ and copy, instructing them to serve same on the <i>Ethelred</i>	}	...	...	...	0	12	0
Paid agents for service of writ and letter							
26th. Attending adverse solicitors, when they served me with copy notice of appearance, and perusing same	...	...	...	...	0	3	4
Attending adverse solicitors, when they waited upon me and explained the importance of obtaining immediate release of the <i>Egbert</i> , and conferring and finally arranging to file consent to release upon receiving their undertaking for bail; afterwards receiving and perusing undertaking	...	...	...	...	0	6	8
27th. Attending adverse solicitors, when they served me with notice of bail, and perusing same	...	...	...	...	0	6	8
Attending making enquiries as to the sufficiency of the proposed sureties	...	...	...	...	0	3	4
Attending in the registry, search as to due execution of bail bond, and paid search	...	...	...	...	0	7	8

APPENDIX.

cclvii

		Higher Scale.		
		£	s.	d.
Oct. 3rd.	Making copy writ for adverse solicitors at their request (extra length)	0	4	0
9th.	Attending adverse solicitors, when they served me with copy summons to direct all proceedings to be stayed until bail in £3000 to answer defendants' counter-claim and in £300 to answer costs had been given and perusing same	0	1	8
	Writing clients informing them thereof and requiring instructions for bail	0	3	6
11th.	Attending summons, order made for all proceedings to be stayed until bail in £2500 to answer counter-claim and £300 to answer costs had been given	0	6	8
23rd.	Instructions to defend counter-claim	0	13	4
	Preparing præcipe for notice of bail and attending the marshal therewith filing same	0	6	8
	Paid stamp on præcipe	0	5	0
	Copy notice of bail for adverse solicitors and attending serving them therewith	0	6	8
	Paid for marshal's report as to the sufficiency of the proposed sureties	0	10	0
	Preparing præcipe for bail bond and attending in the registry, filing same	0	6	8
	Paid stamp	0	5	0
	Paid stamp on bail bond	0	7	6
	Attending the sureties in the registry when they signed bail bond	0	6	8
	Attending filing bail bond	0	6	8
	Paid stamp	0	2	0
	Attending retaining Mr. C.	0	6	8
	Paid his fee and clerk's	1	3	6
	Drawing and engrossing Preliminary Act	0	6	8
	Instructions for statement of claim	2	2	0
	Drawing statement of claim	1	1	0
	Attending Mr. C. with copy statement of claim and seeing him to peruse and settle same	0	6	8
	Paid his fee and clerk's	2	4	6
	Attending counsel in conference on his finally settling statement of claim	0	6	8
	Copy statement of claim for the printer	0	3	0
	Examining proof-sheets of statement of claim	0	1	6
	Paid printer's account	0	14	0
	Copy statement of claim for adverse solicitors	0	2	3
	Attending delivering same	0	6	8
	Attending filing plaintiffs' Preliminary Act	0	6	8
	Paid stamp thereon	0	5	0
	Sittings fee	0	15	0

Michaelmas Sittings.

	Higher Scale.		
	£	s.	d.
Attending adverse solicitors when they served me with copy statement of defence and counter-claim, and perusing same	0	13	4
Attending adverse solicitors bespeaking, and afterwards obtaining further copies statement of defence	0	4	0
Paid for same	0	3	8
Attending adverse solicitors in conference, informing them that I was detaining witnesses on shore at a great expense, and should have to do so until cause was heard, and writing them to consent to an early day being appointed for hearing of cause when they where to obtain instructions	0	6	8
6th. Summons to direct defendants to file affidavit of discovery	0	6	8
Paid stamp on summons	0	3	0
Copy summons to file	0	2	0
Copy and service of summons on adverse solicitors	0	4	6
Instructions for reply in answer to defendants' counter-claim... ..	1	1	0
Drawing reply	0	10	0
Attending Mr. C. with copy reply, and seeing him to peruse and settle same	0	6	8
Paid his fee and clerk's	1	3	6
Copy reply for the printer	0	1	0
Examining proof-sheet of reply	0	0	6
Copy reply to deliver	0	1	0
Attending delivering same	0	6	8
Perusing and considering Preliminary Act	0	3	4
Copy plaintiffs' Preliminary Act for printer	0	3	6
Attending printer with copies Preliminary Acts, and instructing him to furnish proof-sheet of same	0	3	4
Notice to adverse solicitors of appointment to examine Preliminary Acts and service	0	4	0
Attending adverse solicitors in the registry, examining proof-sheet of Preliminary Acts	0	6	8
Paid stamps	0	1	6
Paid printer's account... ..	1	1	0
Two copies Preliminary Acts for the court	0	4	6
The like statement of claim	0	4	6
The like statement of defence	0	4	0
The like reply	0	1	6
Attending depositing printed pleadings in court	0	6	8
Attending setting down cause	0	6	8
Paid stamp	2	0	0
Preparing præcipe for Trinity masters, and attending in the registry, filing same	0	6	8
Paid stamp	0	10	0
Drawing and engrossing notice of trial	0	1	6
Attending adverse solicitors serving them there-with	0	2	6

APPENDIX.

cclix

	Higher Scale.		
	£	s.	d.
8th. Summons to direct an early day to be appointed for hearing of action... ..	0	6	8
Paid stamp on summons	0	3	0
Copy summons to file	0	2	0
Copy and service of summons on adverse solicitors	0	4	6
Attending adverse solicitors when they served me with copy summons to direct plaintiffs to file affidavit of discovery and perusing same	0	1	8
10th. Attending plaintiffs' summons for discovery, order made for affidavit to be filed within a week	0	6	8
Paid for order	0	5	0
Copy and service of summons on adverse solicitors	0	6	8
Attending defendants' summons for discovery, order made for affidavit to be filed within a week	0	6	8
Attending summons for day for hearing of cause, order made	0	6	8
Paid for order	0	5	0
Writing clients informing them of order made on summons, and requiring them to let me have instructions for affidavit of documents	0	3	6
Attending adverse solicitors in the registry when the hearing of cause was fixed for the 30th instant	0	6	8
Attending the translator with documents, and instructing him to translate same	0	6	8
Paid translator	3	5	1
16th. Attending adverse solicitors when they served me with note to produce documents at the hearing, and perusing same	0	13	4
Instructions for affidavit of C. G. as to documents	0	6	8
Drawing affidavit	0	8	0
Engrossing affidavit	0	2	8
Attending deponent to be sworn thereto, and paid oath	0	8	2
Copy affidavit for adverse solicitors	0	2	8
Attending in the registry filing originals	0	6	8
Paid fee	0	2	0
Notice to adverse solicitors that I was ready to exchange affidavits of documents and service	0	4	0
Perusing defendants' affidavit of discovery	0	3	4
17th. Writing clients requiring them to arrange for the attendance of the witnesses the following Tuesday	0	3	6
Attending adverse solicitors in conference, and arranging for a mutual inspection of documents on both sides	0	6	8
Attending adverse solicitors in conference, and giving them an inspection of documents of <i>Stockholm</i> , and at their request arranging to supply them with copy of same	0	6	8
Attending adverse solicitors inspecting log books, &c., of <i>Egbert</i> , and bespeaking copies	0	6	8
Perusing and considering documents... ..	0	8	0
Attending translator with documents, and instructing him to make copy of same for adverse solicitor	0	6	8

	Higher Scale.		
	£	s.	d.
20th. Drawing and engrossing note to produce ...	0	7	6
Attending adverse solicitors serving them there- with	0	2	6
27th. Writing adverse solicitors a long letter in reply to theirs, complaining of my not producing the log- book of the <i>Stockholm</i> , and that no statements had been made before receiver of wreck by the <i>Stock- holm</i>	0	3	6
28th. Adverse solicitors having refused to accept deposi- tions before consul unless further affidavit of documents filed, instructions for further affidavit accordingly	0	6	8
Drawing affidavit	0	6	0
Engrossing same	0	2	0
Attending deponent to be sworn thereto, and paid oath	0	8	2
Copy affidavit for adverse solicitors	0	2	0
Attending serving them therewith	0	2	6
Paid stamp on original	0	2	0
Attending at the London Bridge registry, arranging for an official to attend in Court and produce official log book of <i>Egbert</i> without expense of a subpoena	0	6	8
Paid conduct money to official	1	1	0
Attending arranging for the attendance of an in- terpreter	0	6	8
Attending retaining Mr. B., Q.C.	0	6	8
Paid his fee and clerk's	1	3	6
Instructions for brief	6	6	0
Drawing brief	5	0	0
Copy for Mr. B., Q.C.	1	13	4
Copy for Mr. C.	1	13	4
Two copies, plaintiffs' notice to produce to annex ...	0	4	0
The like defendants' do.	0	4	0
The like defendants' further do.	0	4	0
Two copies documents referred to in plaintiffs' affi- davit of documents for counsel	1	18	8
Two copies depositions before consul at Southampton for counsel	0	5	4
Two copies plaintiffs' affidavits of documents for counsel	0	9	4
The like defendants' do.	0	8	0
Two copies note of protest of <i>Stockholm</i> for counsel	0	2	8
Two copies extracts from log books, &c., of <i>Egbert</i> for counsel	0	16	0
Two copies correspondence for counsel	0	5	4
Two copies statement of claim for counsel	0	4	6
The like defence	0	4	0
The like reply	0	1	6
The like Preliminary Acts	0	4	6
Attending Mr. B., Q.C., with brief and papers, and feeing him for the hearing	1	1	0
Paid his fee	21	0	0
Paid his clerk	0	15	0

	Higher Scale		
	£	s.	d.
Attending Mr. C. with brief and papers, and feeing him for the hearing	0	13	4
Paid his fee	15	15	0
Paid his clerk	0	10	0
Attending Mr. B., Q. C., and feeing him for consultation	0	6	8
Paid his fee and clerk	2	9	6
Attending Mr. C., and feeing him for consultation	0	6	8
Paid his fee and clerk	1	3	6
Writing shorthand writer to attend hearing	0	3	6
30th. Attending consultation with both counsel	0	13	4
Paid for room	0	5	0
Attending Court all day on hearing of action when, after hearing evidence and arguments of counsel on both sides, Court pronounced the <i>Egbert</i> solely to blame for collision, and condemned her owners in damages and costs	2	2	0
Clerk's attendance with witnesses	1	1	0
Paid stamps on production of witnesses	1	15	0
Attending paying Trinity master's fees	0	6	8
Paid same	8	8	0
Paid shorthand writer's account	2	8	0
Paid interpreter's account and attendance	4	4	0
Paid for final decree under seal	1	0	0
Copy for service	0	2	0
Service thereof	0	2	6
Dec. 4th. Instructions for affidavit of A. B. in support of claim for lost effects	0	6	8
Drawing affidavit	0	9	0
Engrossing same	0	3	0
Attending deponent to be sworn thereto and paid oath and exhibits	0	11	8
Instructions for affidavit of C. D. as to the loss of his effects	0	6	8
Drawing affidavit	0	9	0
Engrossing same	0	3	0
Attending deponent to be sworn thereto	0	6	8
Paid oath, and two exhibits	0	5	0
Instructions for affidavit of E. F. as to the loss of his effects	0	6	8
Drawing affidavit	0	9	0
Engrossing same	0	3	0
Attending deponent before a Commissioner on his being sworn to affidavit	0	6	8
Paid oath, two exhibits and interpreter	0	5	0

FORM E.

The John Wells and The Loreley.

(Costs of a consolidated action, defendants in first action being plaintiffs in the second action. Bill of Costs on behalf of the owners of *The John Wells*, 1875, G. No. 27, *The Loreley*).

Loreley, Lower Scale.
John Wells, Higher Scale.

1875.		Lower Scale. £ s. d.
Nov. 12th.		
	Instructions to sue	0 6 8
	Drawing affidavit to lead writ... ..	0 6 0
	Engrossing same... ..	0 2 0
	Attending to be sworn thereto, and paid oath	0 8 2
	Writ of summons	0 6 8
	Paid stamp on writ	0 5 0
	Endorsement of claim	0 2 6
	Paid stamp on affidavit... ..	0 2 0
	Copy writ for service.....	0 2 0
	Attending the marshal with writ and copy, and in- structing him as to service thereof	0 6 8
	Paid marshal's fee	2 0 0
	Preparing telegram to collector requiring him to detain the <i>Loreley</i> until arrival of writ, and attending the marshal obtaining his signature and seal thereto ; afterwards attending dispatching telegram and paid	0 4 4
	Attending the marshal obtaining and filing warrant executed, and perusing certificate of service	0 6 8
	Paid stamp on writ	0 2 0
13th.	Attending adverse solicitors when they served me with notice of appearance, and perusing same	0 3 4
	Attending adverse solicitors when they waited upon me and explained the importance of obtaining the release of <i>The Loreley</i> , and conferring with them thereon, when I arranged to consent to release upon receiving their undertaking for bail ; afterwards attending, receiving, and perusing undertaking	0 6 8
	Attending in the registry filing consent to release	0 3 4
	Paid stamp thereon	0 5 0
15th.	Attending adverse solicitors when they served me with notice of bail, and perusing same	0 3 4
	Attending making inquiries as to the supply of the proposed sureties	0 6 8
	Attending searching as to due execution of bail bond, and paid search	0 7 8
Dec.	Summons to direct this action and <i>The John Wells</i> , 1875, G., No. 27 to be consolidated together	0 3 0
	Paid stamp on summons	0 2 0
	Copy summons to file	0 2 0
	Copy summons for service on adverse solicitors	0 1 0
	Service thereof	0 1 6

				Lower Scale.		
				£	s.	d.
9th.	Attending summons, order made	...	...	0	6	8
	Paid for order	...	...	0	3	0
	Copy and service of order on adverse solicitors	...	...	0	3	0
	Sittings fee	...	...	0	15	0

1876. H. No. 26, and G. No. 27.

Consolidated.

1876, H. No. 27.

				Higher Scale (a).		
				£	s.	d.
	Preparing præcipe for caveat warrant and attending in the registry, filing same	...	...	0	6	8
	Paid stamp on præcipe	...	...	0	5	0
	Attending adverse solicitors when they served me with copy writ, and giving undertaking to appear	...	...	0	6	8
	Instructions to defend	...	...	0	13	4
	Attending in the registry, looking up action, taking particulars thereof and paid search	...	...	0	7	8
	Entering appearance	...	...	0	6	8
	Paid stamp	...	...	0	2	0
	Copy and service of notice of appearance on adverse solicitors	...	...	0	6	8
	Preparing præcipe for note of bail, and attending the marshal therewith, filing same	...	...	0	6	8
	Paid stamp	...	...	0	5	0
	Copy and service of notice of bail on adverse solicitors	...	...	0	6	8
15th.	Paid for report as to sufficiency of proposed sureties	...	...	0	10	0
	Preparing præcipe for bail bond and attending in the registry, filing same	...	...	0	6	8
	Paid stamp	...	...	0	5	0
	Paid stamp on bail bond	...	...	0	7	6
	Attending the sureties in the registry when they signed bail bond	...	...	0	6	8
	Attending filing bail bond	...	...	0	6	8
	Paid stamp thereon	...	...	0	2	0
	Attending Messrs. S. & Co. when they served me with notice of appearance in lieu of Messrs. L. & H., and perusing same	...	...	0	3	4
	Drawing and engrossing Preliminary Act	...	...	0	6	8
	Attending in the registry filing Preliminary Act	...	...	0	6	8
	Paid stamp thereon	...	...	0	5	0
	The like on my own	...	...	0	5	0
	Notice to adverse solicitors that I had filed Preliminary Act and service...	...	...	0	4	6
	Attending adverse solicitors when they served me with copy summons to allow them further time for delivering statement of claim, and perusing same...	...	...	0	1	8
	Attending summons, order made for statement to be delivered in a week	...	...	0	6	8
28th.	Attending adverse solicitors when they served me with copy statement of claim, and perusing same	...	...	0	13	4

(a) Action entered in £2000. See *ante*, p. cix.

	Higher Scale.		
	£	s.	d.
Attending adverse solicitors bespeaking and afterwards obtaining further copies, statement of claim	0	4	0
Paid for same	0	5	1
Attending retaining Mr. C.	0	6	8
Paid his fee and clerk's	1	3	6
Instructions for statement of defence and counter-claim	1	6	8
Drawing statement of defence and counter-claim ...	1	1	0
Attending Mr. C. with copy statement of claim, and feeing him to peruse and settle same	0	6	8
Paid his fee and clerk	2	4	6
Attending counsel in conference on his finally settling statement of defence	0	6	8
1876.			
Jan. 6th. Summons for further time for delivering statement of defence	0	6	8
Paid stamp on summons	0	3	0
Copy summons to file	0	2	0
Copy and service of summons on adverse solicitors...	0	4	6
Attending summons, order made	0	6	8
Paid stamp on order	0	3	0
Copy and service of order on adverse solicitors ...	0	3	6
8th. Copy statement of defence and counter-claim for printer... ..	0	3	8
Examining proof-sheet of statement of defence ...	0	1	10
Paid printer's account	0	10	0
Copy statement of defence to deliver	0	2	9
11th. Attending delivering same	0	6	8
Sittings fee	0	15	0

Hilary Sittings.

15th. Attending adverse solicitors when they served me with copy reply, and perusing same	0	13	4
Feb. 1st. Having received further letter from adverse solicitors requiring to know if I could consent to a day in the following month being appointed for hearing, writing them in reply	0	3	6
2nd. Having received instructions, writing adverse solicitors that I could consent to an early day in March being appointed for the hearing	0	3	6
3rd. Attending adverse solicitors in the registry when the 13th prox. was appointed for hearing of cause	0	6	8
Subpoena ad test.	0	6	8
Paid stamps	0	5	0
Two copies subpoena for service	0	5	0
Writing clients informing them the date apportioned for hearing of cause, and enclosing subpoena and copies for service on independent witnesses, and instructing them thereon	0	3	6
5th. Copy Preliminary Act for printer	0	3	6
Attending adverse solicitors therewith to print with pleadings	0	2	6

	Higher Scale.		
	£	s	d.
Attending adverse solicitors on the registry, examining printed copy Preliminary Act ...	0	6	8
Attending adverse solicitors when they served me with printed copy Preliminary Act, and perusing same ...	0	3	4
Attending adverse solicitors, bespeaking and afterwards obtaining copies Preliminary Act ...	0	4	0
Paid for same ...	0	4	2
16th. Two copies, statement of defence for the Court ...	0	5	6
Attending adverse solicitors therewith, to lodge with printing in Court ...	0	2	6
Afterwards attending them in conference, and arranging for a mutual inspection of documents on both sides ...	0	6	8
Writing clients requiring them to let me have log book of <i>The John Wells</i> ...	0	3	6
Writing collector at Goole requiring him to furnish me with certified copy deposition of master of <i>John Wells</i> and mate of <i>Loreley</i> before receiver of wreck ...	0	3	6
Attending adverse solicitors on conference, and arranging for them to admit certified copy statements before register of wreck ...	0	6	8
29th. On receipt of letter from adverse solicitors stating that the <i>Loreley</i> had sailed to Stettin with several important witnesses on board, and requiring to know if I would consent to the hearing being postponed to the end of the following month, making copy of letter and writing clients therewith for instructions ...	0	3	6
Having received instructions from clients to oppose any postponement, attending adverse solicitors, informing them thereof and conferring thereon, when they stated they should apply to the Court ...	0	3	6
Paid for copy statements made before receiver of wreck ...	0	16	5
Attending adverse solicitors on their inspecting and admitting statements before receiver of wreck made by master and mate of <i>Loreley</i> , and I admitted statement of master of <i>John Wells</i> ...	0	6	8
Mar. 2nd. Attending adverse solicitors when they served M. with copy summons to direct the hearing of cause to be postponed, and perusing same...	0	1	8
Instructions for affidavit of J. H. in opposition to summons ...	0	6	8
Drawing affidavit ...	0	14	0
Engrossing same ...	0	4	8
Attending deponent to be sworn thereto and paid oath ..	0	9	2
4th. Perusing and considering exhibit to affidavit of Mr. H....	0	1	4
Copy for use of cause ...	0	1	4
Attending serving them therewith ...	0	2	6
Attending in the registry filing original ...	0	6	8

					Higher Scale.		
					s.	d.	c.
Paid stamp thereon	...	...	...	...	0	2	0
Attending adverse solicitors when they served me with copy joint affidavit in support of summons, and perusing same	...	...	...	...	0	3	4
7th. Attending summons before registrar, order made for cause to be postponed, plaintiffs to pay costs of adjournment	...	...	...	...	0	6	8
Preparing telegram to clients informing them of result of summons and attending despatching same, and paid, afterwards writing confirming telegram	...	...	...	...	0	7	11
18th. Attending adverse solicitors in the registry when the 5th prox. was appointed for the hearing of cause	...	...	...	...	0	6	8
Subpoena ad test.	...	...	...	...	0	6	8
Paid stamp	...	...	...	...	0	5	0
Two copies of subpoena for service	...	...	...	...	0	4	0
Writing clients informing them of date appointed for hearing of cause and enclosing subpoena and copies for service on the independent witnesses	...	...	...	...	0	3	6
25th. Drawing and engrossing notice to produce log book, &c., of the <i>Loreley</i>	...	...	...	...	0	7	6
Service thereof	...	...	...	...	0	2	6
Attending adverse solicitors when they served me with notice to produce, and perusing same	...	...	...	...	0	6	8
Attending adverse solicitors giving them inspection of log book, &c., of the <i>John Wells</i> ...	...	...	...	...	0	6	8
Attending adverse solicitors inspecting log book, &c., of <i>Loreley</i> and bespeaking copies	...	...	...	...	0	6	8
Paid for copies	...	...	...	...	0	7	0
30th. Attending clients in conference and arranging for the attendance of witnesses without expense of a subpoena	...	...	...	...	0	6	8
April 4th. Attending retaining Mr. M., Q.C.	...	...	...	...	0	6	8
Paid his fee and clerk's	...	...	...	...	1	3	6
Instructions for brief	...	...	...	...	12	12	0
Drawing brief	...	...	...	...	6	13	0
Copy for Mr. M., Q.C.	...	...	...	...	2	4	4
Copy for Mr. C....	...	...	...	...	2	4	4
Two copies plaintiffs' note to produce to annex	...	...	...	...	0	4	0
The like defendants' note	...	...	...	...	0	4	0
Two copies statement before receiver of wreck for counsel	...	...	...	...	1	4	0
Two copies extract from log book, &c., of <i>Loreley</i> for counsel	...	...	...	...	0	14	0
Two copies extract from log book of the <i>John Wells</i> , for counsel	...	...	...	...	0	5	4
Two copies statement of claim for counsel	...	...	...	...	0	5	6
The like statement of defence	...	...	...	...	0	5	6
The like reply	...	...	...	...	0	2	0
The like Preliminary Acts	...	...	...	...	0	4	6
Attending Mr. M., Q.C., with brief and papers, and seeing him for the hearing	...	...	...	...	1	1	0
Paid his fee	...	...	...	...	21	0	0

	Higher Scale.		
	£	s.	d.
His clerk	0	15	0
Attending Mr. C. with brief and papers, and feeing him for the hearing	0	13	4
Paid his fee	15	15	0
Paid his clerk	0	10	0
Attending Mr. M., Q.C., and feeing him for consultation	0	6	8
Paid his fee and clerk	2	9	6
Attending Mr. C. and feeing him for consultation	0	6	8
Paid his fee and clerk	1	3	6
5th. Attending consultation with both counsel	0	13	4
Paid for use of room	0	5	0
Attending court all day on hearing of cause, self and clerk, same part heard and adjourned... ..	3	3	0
Attending Mr. M., Q.C., and feeing him for further hearing	0	13	4
Paid his fee	10	10	0
Paid his clerk	0	10	0
Attending Mr. C., and feeing him for further hearing	0	13	4
Paid his fee	7	7	0
Paid his clerk	0	7	0
6th. Attending court all day, self and clerk, on further hearing of cause, when the judge pronounced the <i>Loreley</i> to blame for collision and in favour of defendants' counter-claim with costs	3	3	0
Paid stamps on production of witnesses	3	6	0
Notice to clients of result of hearing	0	3	6
Attending bespeaking, and afterwards obtaining final decree under seal	0	6	8
Paid for same	1	0	0
Copy for service on adverse solicitors... ..	0	2	0
Service thereof	0	2	6
Attending paying Trinity Master's fees	0	13	4
Paid same	16	16	0
Term fee... ..	0	15	0

FORM F.

The Egbert.

(Plaintiffs' costs of a reference before the registrar and merchants after the judge on the hearing had pronounced in favour of the plaintiffs' claim in an action for damage by collision. For proceedings up to hearing in this action see Form D.)

1876.	Higher Scale.		
Dec. 7th.	£	s.	d.
Instructions for claims	0	6	8
Drawing claim	0	8	0
Instructions for affidavit of C. C. in support of claim	0	6	8
Drawing and engrossing affidavit	0	5	4
Instructions for affidavit of D. T. in support of claim	0	6	8

						Higher Scale		
						£	s	d
Drawing affidavit	...	...	...	...	...	0	8	0
Engrossing same	...	...	...	...	...	0	2	8
Writing clients with affidavit to be sworn, and instructing them as to same	...	...	...	...	...	0	3	6
<i>Hilary Sittings.</i>								
1877.								
Jan.	Instruction for affidavit of Captain B. in support of claim					0	6	8
	Drawing affidavit	...	...	...	...	1	0	0
	Engrossing same	...	...	...	...	0	6	8
12th.	Attending deponent to be sworn thereto					0	6	8
	Paid oath and three exhibits	...	...	...	...	0	4	6
23rd.	Engrossing claim					0	2	8
	Copy for adverse solicitors	...	...	...	...	0	2	8
	Perusing and considering exhibits to affidavit of Captain B.	...	...	...	...	0	7	4
	Copy for use of cause	...	...	...	...	0	7	4
	Copy affidavit and exhibits for adverse solicitors	...	...	...	...	0	13	8
	Copy affidavit of N. B. for adverse solicitors	...	...	...	...	0	1	4
	The like of L. B.	...	...	...	...	0	1	4
	The like of C. C.	...	...	...	...	0	1	4
	The like of J. P.	...	...	...	...	0	2	0
	Perusing and considering exhibits to affidavit of J. P. W.	...	...	...	...	0	2	4
	Copy for use of cause	...	...	...	...	0	2	4
	Copy affidavit and exhibits for adverse solicitors	...	...	...	...	0	5	0
	Copy affidavit of F. W. for adverse solicitor	...	...	...	...	0	3	0
	The like of P. H.	...	...	...	...	0	3	0
	The like of O. A.	...	...	...	...	0	3	0
	Attending adverse solicitors, serving them with copy, claim, and proofs	...	...	...	...	0	2	6
	Attending in the registry filing originals	...	...	...	...	0	6	8
	Paid stamps thereon and copy	...	...	...	...	1	4	0
26th.	Attending adverse solicitors when they served me with notice to produce bills of sale, original charter party, bills of lading, and all vouchers for repairs done to the <i>Stockholm</i> since her purchase by plaintiffs, and perusing same					0	6	8
	Writing clients informing them of documents required to be produced by defendants, requiring them to let me have same	...	...	...	...	0	3	6
Feb.	Attending adverse solicitors, informing them that the captain of the <i>Stockholm</i> would have to remain on shore until the reference had been heard and requiring them therefore to consent to an early day for a reference, when they were to obtain instructions					0	6	8
	Attending adverse solicitors when they served me with copy summons to allow defendants further time for filing counter affidavits, and perusing same	...	...	...	...	0	1	8
8th.	On receipt of letter from adverse solicitor stating that he would file counter affidavits in a week, and as to the amount alleged to have been paid for the <i>Stockholm</i> , writing in reply...					0	3	6

APPENDIX.

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					Higher Scale.		
					£	s	d
12th.	Attending summons, order made for counter affidavits to be filed that day	...	...	...	0	6	8
	Attending adverse solicitors when they served me with two counter affidavits in opposition to claim and perusing same	...	..	...	0	4	0
	Preparing notice to place reference on list for hearing, and attending in the registry filing same	...	...	...	0	6	8
	Paid stamp on notice and copy	..	...	...	0	11	0
	Attending adverse solicitors in the registry when the reference was appointed for the 23rd instant	...	...	...	0	6	8
23rd.	Attending long reference before the registrar and merchants	...	...	...	4	4	0
	Attending preparing reference fees	...	...	...	0	16	8
	Paid same	...	...	...	15	15	0
24th.	Notice of taking up and filing registrar's report, and serving same	...	...	...	0	4	0
	Attending in the registry filing notice and original report	...	...	...	0	6	8
	Paid stamp on note	...	...	...	0	5	0
	The like on original report and copy	...	...	...	1	2	0
	Attending bespeaking, and afterwards obtaining copy registrar's report	...	...	...	0	6	8
	Paid for same under seal	...	...	...	0	6	8
	Perusing and considering report	...	...	...	0	6	8
	Instructions not to object to report	...	...	...	0	6	8
	Attending adverse solicitors calculating and agreeing amount of interest payable	...	...	...	0	6	8
	Drawing affidavit of increase	...	...	...	0	8	0
	Engrossing same	...	...	...	0	2	8
	Attending deponent to be sworn thereto, and paid oath	...	...	...	0	8	2
	Copy affidavit for adverse solicitors	...	..	..	0	2	8
	Paid stamp on affidavit...	...	...	...	0	2	0
	Drawing bill of costs	...	...	...	3	9	0
	Copy for registrar	...	...	...			
	Copy for adverse solicitors	...	...	...			
	Perusing and considering agents expenses	...	...	...	0	2	8
	Copy for adverse solicitors	...	...	...	0	2	8
	Copy for use of cause	...	...	...	0	2	8
	Attending adverse solicitors with bill of costs for taxation	...	...	...	0	2	6
	Attending taxation	...	...	...	1	11	6
	Paid stamps	...	...	...	7	7	0
	Attending agreeing costs as taxed	...	...	...	0	6	8
	Attending adverse solicitors obtaining cheque for damages, interest, and taxed costs, and giving receipt and stamp	...	...	...	0	8	5
	Sittings fee	...	...	...	0	15	0
	Postages, &c.	...	...	...	0	7	6

FORM G.

The Annie Webster.

(Defendant's costs of a reference before the registrar after the judge on the hearing had pronounced in favour of defendant's counter-claim in an action for damages by collision.)

	Lower Scale.		
	s.	d.	q.
1876.			
Aug. 10th. Having received letter from adverse solicitors stating that claim must go before the registrar, attending in the registry filing claim	0	6	8
Paid stamps thereon and on copy	0	11	0

Michaelmas Sittings.

November 6th. Preparing notice to place reference on list, for hearing and attending in the registry filing same	0	6	8
Paid stamp	0	10	0
Attending adverse solicitors in the registry when the reference was appointed for the 17th instant	0	6	8
Notice thereof to clients	0	3	6
Attending Mr. A., shipbuilder, and arranging for his attendance at reference without a subpoena	0	3	6
The like Mr. B., shipwright	0	3	6
The like Mr. C., superintendent at Northumberland graving docks	0	3	6
The like Mr. A., shipbuilder	0	3	6
11th. On receipt of notice, writing clients that reference had been altered to 16th instant	0	3	6
Notice to Mr. A.	0	3	6
Notice to Mr. B.	0	3	6
Aug. 16th. Attending long reference before registrar and merchants	3	3	0
Attending paying reference fees	0	16	8
Paid same	15	15	0
Paid stamp on production of witnesses	1	2	0
Paid Mr. A. his expenses	2	2	0
The like Mr. B.	1	1	0
17th. Drawing and engrossing notice of taking up and filing registrar's report	0	3	4
Copy for adverse solicitors and attending serving them therewith	0	3	6
Attending in the registry filing notice and original report	0	6	8
Paid stamp on notice	0	5	0
The like on original report and copy	1	1	0
Attending bespeaking and afterwards obtaining office copy registrar's report	0	6	8
Paid for same under seal, and collating	0	5	6
Perusing and considering report	0	6	8
Instructions not to object to report	0	6	8
Attending adverse solicitors calculating and agreeing amount of interest payable	0	6	8

	Higher Scale.		
	£	s.	d.
Paid stamp thereon	0	10	0
April 3rd. Drawing case to support motion to stay proceedings	0	13	4
Copy for counsel	0	6	8
Attending Mr. P. therewith, and seeing him to attend motion... ..	0	6	8
Paid his fee and clerk	2	4	6
4th. Attending motion in Court when the judge refused at present to stay execution, but made an order as to the documents to be printed, and ordered our parties to give security for the costs of the appeal	0	13	4
Copy order and service on adverse solicitor	0	4	6
Paid shorthand writer for transcript of judgment ...	15	18	8*
Copy of the judgment for the official reporter of the Court	0	5	0
Attending him therewith, and seeing him to settle judgment	0	6	8
Paid his fee and clerk	2	4	6
13th. Writing Messrs. S. & Co. as to security for costs	0	3	6
20th. Attending obtaining receivable order for £200 to be paid into Court as security for costs of appeal	0	6	8
Paid stamp thereon	0	2	6
Attending at the Bank of England paying in amount of tender and obtaining receipt	0	6	8
Drawing and engrossing notice of payment into Court	0	3	4
Copy notice for adverse solicitors, and attending serving them therewith	0	4	0
Attending filing notice of payment and receipt ...	0	6	8
Paid stamps thereon	0	6	0
22nd. Attending the adverse solicitors in conference going through the papers with them, and agreeing on the documents to be included in the record ...	0	13	4
Attending filing the evidence	0	6	8
Paid stamps thereon	4	10	0
25th. Copy record for the printer	9	0	0
Drawing and engrossing index thereto	0	17	0
26th. Correcting proof sheets of record	4	9	6
May 1st. Perusing and considering the record, and instructions for brief	8	19	0
Attending at the Court of Appeal with copies of record, and setting down appeal	0	6	8
Paid fee thereon	1	1	0
3rd. Drawing brief	4	1	0
Two copies thereof for counsel	2	16	0
Two copies of the record for counsel	13	8	6
Attending Mr. B., Q.C. with brief, and seeing him for the hearing of the appeal	2	2	0
Paid his fee and clerk	80	12	6

* This sum must not be regarded as a precedent, it included more than the actual judgment, and was allowed only on account of a special agreement between the parties.

APPENDIX.

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	Higher Scale.		
	£	s.	d.
Attending Mr. P. with brief and seeing him ...	2	2	0
Paid his fee and clerk ...	53	15	0
Attending Mr. B., Q. C., and seeing him for a consultation ...	0	6	8
Paid his fee and clerk ...	2	9	6
The like attendance upon Mr. P. ...	0	6	8
Paid his fee and clerk ...	1	3	6
4th. Attending searching cause list when we found that the Court would not take Admiralty appeals after to-morrow, and that the hearing must therefore stand over for a considerable time ...	0	6	8
16th. Attending consultation with counsel ...	0	13	4
17th. Attending hearing of appeal, when after hearing counsel the Court adjourned until the following day	2	2	0
Attending Mr. B., Q.C., paying his refresher fee for the further hearing ...	0	13	4
Paid for his fee and clerk ...	11	0	0
The like attendance on Mr. P. ...	0	13	4
Paid his fee and clerk ...	7	17	0
18th. Attending the further hearing of the appeal when the Court reserved judgment ...	2	2	0
27th. Attending Mr. B., Q.C., seeing him to attend the judgment ...	0	6	8
Paid his fee and clerk ...	2	4	6
The like attendance on, and fee to Mr. P. ...	1	10	2
29th. Attending Court when the <i>Glannibanta</i> was pronounced solely to blame for the collision, and the decision of the Court below was reversed, and the respondents were condemned in damages and in costs in both Courts ...	1	1	0
Term fee, letters, &c. ...	0	15	0
June 3rd. Attending in the registry, bespeaking and obtaining decree ...	0	6	8
Paid for same ...	0	10	0
Copy for adverse solicitors ...	0	3	4
Attending serving them therewith ...	0	2	6
July 18th. Paid account received from Messrs. H., of Ramsgate, for securing the attendance of Manthorpe serving him with subpoena, and providing a substitute for him during his absence, and their charges	8	19	3
Terms for letters, &c. ...	0	15	0
Postage and other disbursements ...	0	10	0
1877. May 24th. Attending on the account in the registry, looking up the books and ascertaining the amount of the net proceeds now in Court of the sale of the <i>Transit</i> ...	0	6	8
Summons to direct amount of the proceeds of sale to be paid to Mr. W. ...	0	6	8
Paid issuing ...	0	3	0
Copy summons for registrar ...	0	2	0
Copy and service on adverse solicitors ...	0	4	6
29th. Attending our summons when order was made subject to a declaration of the satisfaction of the salvage action being filed ...	0	6	8

						Higher Scale.		
						£	s.	d.
Paid for order	...	...	...	...	...	0	5	0
Copy and service on adverse solicitors	...	...	...	...	...	0	3	6
June 12th. Paid poundage, and for preparing receipt	...	...	...	...	...	1	2	7
Paid stamp on judge's order for payment	...	...	...	...	...	0	5	0
Attending in the registry with Mr. W. on his receiving the amount and signing receipt	...	...	...	...	...	0	6	8
Attending filing judge's order and receipt	...	...	...	...	...	0	6	8
July 2nd. Summons for payment out of money of money paid into Court as security for costs	...	...	...	...	...	0	6	8
Copy for the registrar	...	...	...	...	...	0	2	0
Paid issuing	...	...	...	...	...	0	3	0
Copy and service	...	...	...	...	...	0	4	6
Attending summons when order made	...	...	...	...	...	0	6	8
Paid for order	...	...	...	...	...	0	5	0
Copy and service	...	...	...	...	...	0	3	6
Paid poundage fees, and for receipt	...	...	...	...	...	2	12	7
Paid stamp on judge's order for payment	...	...	...	...	...	0	5	0
Attending receiving the amount, and signing receipt	...	...	...	...	...	0	6	8
Attending filing judge's order and receipt	...	...	...	...	...	0	6	8

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All the more important decisions upon the construction of the Acts and Rules down to the end of the Michaelmas Sittings, 1877, will, I believe, be found noticed with some of later date.

Many minor typographical changes have been made in this edition, which will, I hope, be found to increase its convenience in use. Italic type has been used throughout the book to indicate repealed matter.

All the Rules of Court, both those in the Schedule and those of later date, have been issued without marginal notes. I have ventured to add short marginal notes to them.

I cannot too strongly express my obligations to Mr. Biddle, of the Master of the Rolls Chambers, for his assistance in the preparation of this edition. The whole book has been revised by him; and I have throughout received from him very valuable suggestions. He has also relieved me of much labour by revising and annotating the forms annexed to the rules, and in many other ways.

I wish particularly to notice the Table of Cases, which Mr. Biddle has prepared. The course ordinarily adopted throughout the book is to cite each case with a reference to only one report of it, except where there appeared special reason for referring to another. The Law Reports are commonly cited where the case has appeared in that series. To have mentioned in the body of the work every report of each case would have been a cumbersome and I think an inconvenient plan. On the other hand, many practitioners use series of reports other than those commonly cited in this Book. To meet the difficulty thus arising, the Table of Cases gives a reference to all the reports of each case cited.

The reconstruction of the Index, rendered necessary by the large amount of new matter, has been kindly undertaken by my learned friend, Mr. Harry Greenwood, of the Chancery Bar.

The Introduction which appeared in the former edition has been omitted in this. That Introduction was intended to assist the reader to become acquainted with a system then wholly new. The system is no longer new or unknown, so that there is not the same necessity for such an introduction. The omission contributes to secure an object which I have throughout had in view, the keeping down the bulk of the book.

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